MISSISSIPPI CODE 1972
Annotated

Labor and Industry

Title 71

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VOLUME 15

TITLE 71

LABOR AND INDUSTRY

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MISSISSIPPI CODE

1972

ANNOTATED

ADOPTED AS THE OFFICIAL CODE OF THE
STATE OF MISSISSIPPI
BY THE
1972 SESSION OF THE LEGISLATURE

VOLUME FIFTEEN

LABOR AND INDUSTRY

§§ 71-1-1 to 71-11-3

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
TO THE END OF THE 2011 REGULAR LEGISLATIVE SESSION

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PREFACE

The Mississippi Code of 1972, which became effective on November 1, 1973, is the culmination of nearly four years of effort on the part of the Legislature, the Attorney General's office and the publishers, which brings together provisions of general statutory law having a common subject matter into a more orderly and logical framework of code titles and chapters, and employing a modern and effective section numbering system. A major by-product of the code revision will be the state-owned magnetic computer tape containing the Mississippi Code of 1972, which will be of invaluable assistance to the Legislature and to the state.

The enabling act for the code was a recommendation of the Mississippi State Bar, which resulted in the consideration and passage of Senate Bill 1964, Chapter 465, Laws of 1970, signed into law by Governor John Bell Williams.

The Code Committee provided for in that act was comprised of A. F. Summer, Attorney General, Heber Ladner, Secretary of State, Representative Edgar J. Stephens, Jr., Chairman, House Appropriations Committee, Senator William G. Burgin, Jr., Chairman, Senate Appropriations Committee, Representative H. L. Meredith, Jr., Chairman, House Judiciary "A" and Judiciary en banc Committees, Senator E. K. Collins, Chairman, Senate Judiciary "A" and Judiciary en banc Committees, Representative Ney McKinley Gore, Jr., Chairman, House Judiciary "B" Committee, and Senator William E. Alexander, Chairman, Senate Judiciary "B" Committee. In 1972, Representative Marby Robert Penton and Senator Herman B. Decell, Chairman of House and Senate Judiciary "B" Committees, respectively, became members of the Committee, replacing Representative Gore and Senator Collins, Senator Alexander having been appointed Chairman of Senate Judiciary "A" and Judiciary en banc Committees. The Deputy Attorney General, Delos H. Burks, served the Code Committee as Secretary. Special Assistant Attorney General Fred J. Lotterhos, under the supervision of the Attorney General, was assigned the principal responsibility for the supervision of the recodification, including the consideration and treatment of some 16,000 sections of code manuscript.

Final legislative approval was given to the Mississippi Code of 1972 by passage of Senate Bill 2034, Laws of 1972, which was signed by Governor William L. Waller on April 26, 1972. A copy of that act is set out in Volume 1, following the Publisher's Foreword.

The Code Committee is of the opinion that the recodification has been thoroughly and well accomplished, and will result in a greatly improved repository of the general statutory law of the state.

A. F. SUMMER
ATTORNEY GENERAL

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PUBLISHER'S FOREWORD

This 2011 Replacement Volume 15 of the Mississippi Code of 1972 Annotated, represents material appearing in the original 1973 Volume 15A and the 2000 Replacement Volume 15, and reflects amendments, repeals, and new Code provisions enacted by the Mississippi Legislature through the 2011 Regular Session.

This volume contains the text of Title 71, of the Mississippi Code of 1972 Annotated, as amended through the 2011 Regular Legislative Session.

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Many of these cases were decided under the former statutes in effect prior to the enactment of the Code of 1972. These earlier cases have been moved to pertinent sections of the Code where they may be useful in interpreting the current statutes. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals with decision dates up to August 17, 2010, and decisions of the appropriate federal courts with decision dates up to May 27, 2010. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 2nd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal Series
Mississippi College Law Review
Mississippi Law Journal

Finally, published Opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

A comprehensive Index appears at the end of this volume.

Visit the LexisNexis website at http://www.lexisnexis.com for an online bookstore, technical support, customer support, and other company information.

For further information or assistance, please call us toll-free at (800) 833-9844, fax us toll-free at (800) 643-1280, e-mail us at customer.support@bender.com, or write to: Mississippi Code Editor, LexisNexis, 701 E. Water Street, Charlottesville, VA 22902-5389.

August 2011 LexisNexis

User's Guide

This guide is designed to help both the lawyer and the layperson get the most out of the Mississippi Code of 1972 Annotated. Information about key features of the Code and suggestions for its more effective use are given under the following headings:

— Advance Code Service
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— Analyses
— Attorney General Opinions
— Code Status
— Comparable Legislation from other States
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— Tables

If you have a question not addressed by the User's Guide, or comments about your Code service, you may contact us by calling us toll-free at (800) 833-9844, faxing us toll-free at (800) 643-1280, e-mailing us at customer.support@bender.com, or writing to Mississippi Code Editor, LexisNexis, 701 E Water Street, Charlottesville, VA 22902-5389.

ADVANCE CODE SERVICE

Three times a year, at roughly quarterly intervals between delivery of Code supplement pocket parts, we publish the Mississippi Advance Code Service pamphlets. These pamphlets contain updated statutory material and annotations to Attorney General opinions, research and practice references, and recent court decisions construing the Code. Each pamphlet is cumulative, so that each is a "one-stop" source of case notes updating those in your Code bound volumes and pocket parts.

ADVANCE SHEETS

The Advance Sheets consist of a series of pamphlets issued in the spring. The series reproduces the acts passed by the Mississippi Legislature and approved by the Governor during the legislative session. Features include tables showing the impact of legislation on sections of the Mississippi Code of 1972 Annotated, and a cumulative index. These pamphlets enable the user to receive a preview of approved legislation prior to supplement availability, and serve as an excellent source of legislative history.

AMENDMENT NOTES

Every time a Code provision is amended, we prepare a note describing the effect of the amendment. By reading the note, you can ascertain the impact of the change without having to check the former statute itself.

Amendment notes are retained in the Supplement until the bound volume is replaced, at which time notes from all but the last two years are deleted.

Amendment notes are available online from 1991 until the present in the Mississippi Legislative Archive.

ANALYSES

Each title, chapter, and article appearing in a bound volume or supplement is preceded by an analysis. The analysis details the scope of the title, chapter, and article and enables you to see at a glance the content of the title, chapter, and article without resorting to a page-by-page examination in the bound volume or supplement.

ATTORNEY GENERAL OPINIONS

Opinions of the Attorney General for the State of Mississippi have been read for constructions of Mississippi law. Notes describing the subject matter of the opinions have been placed under relevant Code provisions under the heading "Attorney General Opinions." The citation at the end of each note refers to the person requesting the opinion, the date of the opinion, and the opinion number.

CODE STATUS

The Mississippi Code of 1972 Annotated is Mississippi's official code and is considered evidence of the statute law of the State of Mississippi (see § 1-1-8). The Code was enacted by Chapter 394 of the Laws of 1972, which was signed by the Governor on April 26, 1972.

Title 1, Chapters 1 through 5 of the Code contain statutes governing the status and construction of the Code.

COMPARABLE LEGISLATION FROM OTHER STATES

Notes to comparable legislation from other states appear for uniform laws, interstate compacts, statutory provisions pertaining to reciprocity and cooperation with other states, and various important statutes of general interest. Other states' statutes that are similar in subject matter and scope to those of Mississippi are cited, generally, under the first section of the chapter or article to which they pertain. Occasionally, comparable legislation pertains to only one section, in which case it is cited under that section rather than at the chapter or article level.

See also *Federal Aspects*.

COURT RULES

The Mississippi Court Rules are published separately by LexisNexis in a fully annotated softcover volume which is replaced annually and supplemented semi-annually.

The Court Rules volume contains statewide rules of procedure of the state courts, the local rules of the United States district courts and bankruptcy courts for Mississippi, and the rules of the United States Court of Appeals for the Fifth Circuit. Rules are received from the courts and edited only for stylistic consistency. For further information, see the Preface to the Mississippi Court Rules volume.

CROSS REFERENCES

Cross references refer you to notes under other Code sections, that may affect a law or place it in context. Cross references also are used under repealed provisions to refer you to an existing law on a similar subject. Cross references do not cite all related statutes, however, since these can be identified by using the General Index.

See also *Comparable Legislation from other States* and *Federal Aspects*.

EDITOR'S NOTES

Editor's notes are notes prepared by the Publisher that contain information about important or unusual features of a law, or special circumstances surrounding passage of the law, that are not apparent from the law's text.

See also *Effective Dates*.

EFFECTIVE DATES

Absent a specific effective date provision within an act, Mississippi laws generally take effect upon approval date, which is the date the act is signed into law by the Governor. Acts affecting voting rights and procedures take effect on the date the United States Attorney General interposes no objection under § 5 of the Voting Right Act of 1965.

FEDERAL ASPECTS

Notes to federal legislation that is similar in subject matter and scope to the laws of Mississippi are referenced throughout the Code. In addition, the Code contains the United States Code Service citation for any federal law that is referred to in a Mississippi statute by its popular name or by its session law designation.

See also *Comparable Legislation from other States*.

INDEX

The Code is completely indexed in two softcover Index volumes, which are updated and replaced annually. In addition, each volume of the Code is followed by its own index. As accurate and thorough as the Index is, your best defense against index wild goose chases is familiarity with indexing techniques. To that end, an explanatory Foreword to the Index appears in the first Index volume.

JOINT LEGISLATIVE COMMITTEE NOTES

Joint Legislative Committee notes are included in the Code to describe codification decisions made by the Mississippi Joint Legislative Committee on Compilation, Revision and Publication of Legislation. Examples of Committee actions that warrant the inclusion of a note are the integration of multiple amendments to a single Code section during the same legislative session, and the correction of typographical errors appearing in the Code.

JUDICIAL DECISIONS

Every reported case from the Supreme Court of Mississippi, the Court of Appeals of Mississippi, federal district courts for Mississippi, the federal Fifth Circuit Court of Appeals and the United States Supreme Court has been read for constructions of Mississippi law. These constructions are noted under pertinent sections of the statutes or Mississippi Constitution provisions, under the heading "Judicial Decisions." Where a decision has been reviewed by a higher court, subsequent judicial history and disposition is noted in the case note if such disposition has any bearing on the annotated material. Where two or more decisions state the same rule of law, the case citations are cumulated under one case note.

Case notes are grouped together under headings called "catchlines." The catchlines identify the basic subject matter of the case notes and assist the user in locating pertinent notes. Catchlines are numbered and arranged thematically, with "In general" first. Where there are two or more catchlines, an analysis, listing all the catchlines, precedes the annotations.

Frequently, statutes carry notes to cases that arose under earlier laws on the same subject. Case notes are retained so long as the editor believes the note will have some relevance under current law, though of course the relevance may be diminished by later changes in the law. These case notes appear under the heading "Decisions under former law."

ORGANIZATION AND NUMBERING SYSTEM

The Code is organized by titles, chapters, articles, subarticles, undesignated centered headings and sections. Analyses at the beginning of each title, chapter, article, and subarticle help you understand the internal arrangement of each Code unit (see *Analyses*).

Odd numbers are generally used for the numbering of titles, chapters and sections. Even numbers have been used for some chapters and sections so that a particular new chapter or section might be logically placed with other chapters and sections dealing with the same or similar subject matter. Similarly, the use of numbers with decimal points has been used for some sections in order that they may be inserted among other sections pertaining to the same subject.

The title, chapter, and section for each Code section is revealed by its section number. Thus, in the designation "§ 1-3-65," the first digit ("1") means the provision is in Title 1 ("Laws and Statutes"); the second ("3") indicates Chapter 3 ("Construction of Statutes"); and the last two digits ("65") mean the 65th section in that chapter ("Construction of terms generally").

Articles and subarticles are not reflected by section number designations.

Within sections, subsections and paragraphs usually are designated following this pattern: (1)(a)(i)1. or (1)(a)(i)A. A distinctive indention scheme is applied to suggest the relative value of each unit within this hierarchy.

PLACEMENT OF NOTES

Where a note pertains to a single statute section, it will of course be set out following that section. In many instances, however, a note applies equally to several statute sections or to an entire chapter or article. If the pertinent sections are scattered, or few in number, the note will be duplicated for each section. But where the note applies to all or most of the sections in a chapter or article, we prevent the space-consuming repetition of notes by placing the note at the very beginning of the chapter or article.

REPLACEMENT VOLUMES

The Code is periodically updated and streamlined by the replacement of volumes. Although a current set of the Code contains all currently applicable statutes, we encourage you to retain replaced volumes and their supplement pockets parts for historical reference.

RESEARCH AND PRACTICE REFERENCES

Citations to references in American Jurisprudence, American Jurisprudence Pleading and Practice, American Jurisprudence Proof of Facts, American Jurisprudence Trials, American Law Reports, First through Sixth Series, ALR Federal, Corpus Juris Secundum, various other treatises and practice guides, and Mississippi law journals are given under this heading, wherever the references appear to discuss the statute under which the citation appears, or a topic related to the statute. These citations are intended only to give you a starting point for your library research. The Mississippi law journals include Mississippi Law Journal and Mississippi College Law Review.

SOURCE NOTES

Each section of the Code is followed by a brief note showing the acts of the legislature on which it is based, including the act that originally enacted the section and any subsequent amendments.

The source note follows the section text, preceding any other annotations for the section. Information in the source note is listed in chronological order, with the most recent information listed last. If a section has been renumbered, the former number will appear in the source note. :

The tables volume should also be consulted when researching the history of a statutory section, since it contains cross reference tables that provide a statutory citation for each section of the session laws and the date each act went into effect.

STATUTE HEADINGS

Headings or "catchlines" for Code sections and subsections are generally created and maintained by the publisher. They are mere catchwords and are not to be deemed or taken as the official title of a section or as a part of the section. Your suggestions for the improvement of particular catchlines are invited.

TABLES

The Mississippi Code of 1972 Annotated contains several tables that can assist you in your research. These are published in the Statutory Tables volume of the Code, and include the following:

- Sections of the Code of 1930 carried into the Code of 1942.
- Sections of the Code of 1942 carried into the Code of 1972.
- Allocation of Acts of Legislature, 1931 — 1972.
- Allocation of Acts of Legislature, 1972 — present.
- Consolidated Tables of amendments and repeals of 1942 Code sections.

- Consolidated Tables of amendments and repeals of 1972 Code sections.

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TITLE 71

LABOR AND INDUSTRY

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CHAPTER 1

Employer and Employee

Sec.
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§ 71-1-1. Occupational health and safety program.

The state board of health is authorized to establish an occupational health and safety program and is empowered:

(a) To employ such qualified personnel as staff to carry out the duties and responsibilities set forth herein;

(b) To develop and make available upon request to all employers of the state, including public employers, information, consultation and assistance related to safety and health laws, regulations, measures and standards; to participate and assist with training and educational programs, directed toward employee safety and disease prevention;

(c) To employ such personnel and procure such equipment as necessary to provide on-site consultive services related to assistance, information, education or training of employers and employees toward compliance with safety and health standards and toward the establishment of safety and health programs to prevent work-connected disabilities;

(d) To collect, compile and report statistics related to work-connected disabilities in Mississippi; such statistical work shall be performed in cooperation with other statistic-gathering agencies with the federal and state governments. Such statistical reports as may be available shall be made known to employers and employees.

(e) To receive such federal or state grants and appropriations as available to further the education, training and assistance to the employers and employees of Mississippi in preventing work-connected disabilities.

(f) Nothing in this section shall be construed as authorizing the state board of health to administer or enforce in any way the Federal Occupational Safety and Health Act, known as OSHA.

SOURCES: Codes, Hemingway's 1917, § 4499; 1930, § 4637; 1942, § 6977; Laws, 1914, ch. 163; Laws, 1974, ch. 515, § 1, eff from and after July 1, 1974.

Cross References — Oath and bond of state officers, see §§ 25-1-9 et seq.

The power of the state board of health to establish programs concerning occupational safety and health, see § 41-3-15.

Federal Aspects — The Federal Occupational Safety and Health Act (OSHA) appears generally as 26 USCS §§ 651 et seq.

JUDICIAL DECISIONS

1. In general.

In a products liability/negligence suit, the court reserved judgment on whether expert testimony as to whether Occupational Safety and Health Administration standards had been violated should be admitted under Fed. R. Evid. 702 with regard to whether a ladder that provided access to an industrial machine was defectively designed; under Miss. Code Ann. § 71-1-1(f), OSHA regulations did not have compulsory force on the issue of defective design. Walker v. George Koch Sons, Inc., — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 25860 (S.D. Miss. Mar. 27, 2009).

Evidence of regulations promulgated under Occupational Safety and Health Act (OSHA) is not admissible to show negligence. Sumrall v. Mississippi Power Co., 693 So. 2d 359 (Miss. 1997), reh'g denied, 695 So. 2d 601 (Miss. 1997).

Trial court did not abuse its discretion in refusing to allow evidence of Occupational Safety and Health Act (OSHA) violations to impeach witness after trial court had in general refused to allow evidence of OSHA regulations, in negligence action brought by employee of contractor retained by electric utility to install new fly ash pond discharge structure for coal-burning facility against utility, arising from injuries allegedly suffered while working in trench; there was little doubt that true intent of counsel for employee was not to impeach witness' credibility but, rather, to present evidence of OSHA violations which he could not introduce otherwise. Sumrall v. Mississippi Power Co., 693 So. 2d 359 (Miss. 1997), reh'g denied, 695 So. 2d 601 (Miss. 1997).

The state board of health cannot arbitrarily remove the state factory inspector, but can do so only for good cause following charges, notice, and an opportunity to be heard. State ex rel. Att'y Gen. v. McDowell, 111 Miss. 596, 71 So. 867 (1916).

The term of office of the state factory inspector is four years. State ex rel. Att'y Gen. v. McDowell, 111 Miss. 596, 71 So. 867 (1916).

RESEARCH REFERENCES

ALR. Propriety of state or local government health officer's warrantless search-post—Camara cases. 53 A.L.R.4th 1168.

Employer's liability to employee for failure to provide work environment free from tobacco smoke. 63 A.L.R.4th 1021.

Liability for retaliation against at-will employee for public complaints or efforts relating to health or safety. 75 A.L.R.4th 13.

When is "greater hazard" defense available to employer cited for violation of Occupational Safety and Health Act (29 USCS §§ 651 et seq). 47 A.L.R. Fed. 348.

Validity, construction, and application of OSHA general industry standards for scaffolding (29 CFR § 1910.28). 47 A.L.R. Fed. 809.

Construction and application of provision of 29 USCS § 658(a) that OSHA citation "shall describe with particularity the nature of the violation." 48 A.L.R. Fed. 466.

What is "recognized hazard" within meaning of general duty clause of Occupational Safety and Health Act (29 USCS § 654(a)(1)). 50 A.L.R. Fed. 741.

Propriety of conducting OSHA plant discovery inspection by nonfederally employed expert. 50 A.L.R. Fed. 906.

What are "extraordinary circumstances" of 29 USCS § 660(a) which permit judicial review of matters not raised before Occupational Safety and Health Review Commission. 52 A.L.R. Fed. 867.

Inspectors' authority to conduct physical examination of employees, or to have access to employees' medical and personnel records pursuant to § 8 of the Occupational Safety and Health Act of 1970 (29 USCS § 657(a), (b)). 56 A.L.R. Fed. 262.

Employee misconduct as defense to citation, issued pursuant to provisions of Occupational Safety and Health Act (29 USCS §§ 651 et seq.), arising out of alleged violation of standards resulting in death or personal injury of employee. 59 A.L.R. Fed. 395.

Propriety of challenging validity of OSHA standard at time of judicial review of enforcement proceeding under § 11(a) of Occupational Safety and Health Act (29 USCS § 660(a)). 61 A.L.R. Fed. 422.

Economic feasibility as factor affecting validity of, or obligation of compliance with, standards established under Occupational Safety and Health Act (29 USCS §§ 651 et seq). 68 A.L.R. Fed. 732.

Pre-emptive effect of Occupational Safety and Health Act of 1970 (29 USCS §§ 651-678) and standards issued thereunder. 88 A.L.R. Fed. 833.

What constitutes "willful" violation for purposes of §§ 17(a) or (e) of Occupational Safety and Health Act of 1970 (29 U.S.C.S. § 666(a) or § 666(e)). 161 A.L.R. Fed. 561.

What constitutes "repeated" or "willful" violation for purposes of state occupational safety and health acts. 17 A.L.R.6th 715.

Am Jur. 61 Am. Jur. 2d, Plant and Job Safety — OSHA and State Laws §§ 54-57, 59-62, 64, 65.

17 Am. Jur. Pl & Pr Forms (Rev), Master and Servant, Forms 211 et seq. (liability of employer for injuries to employee).

CJS. 51 C.J.S., Labor Relations § 3.

Practice References. John M. Hament and Roger S. Kaplan, Occupational Safety and Health Act (OSHA) (Matthew Bender).

Jeffrey L. Hirsch, Occupational Safety and Health Handbook: An Employer 's Guide to OSHA Laws, Regulations, and Practices (LexisNexis).

Labor and Employment Law (Matthew Bender).

§§ 71-1-3 through 71-1-9. Repealed.

Repealed by Laws, 1974, ch. 515, § 2, eff from and after July 1, 1974.

§ 71-1-3. [Codes, Hemingway's 1917, § 4501; 1930, § 4638; 1942, § 6978; Laws, 1914, ch. 163]

§ 71-1-5. [Codes, Hemingway's 1917, § 4502; 1930, § 4639; 1942, § 6979; Laws, 1914, ch. 163]

§ 71-1-7. [Codes, Hemingway's 1917, § 4503; 1930, § 4640; 1942, § 6980; Law, 1914, ch. 163]

§ 71-1-9. [Codes, Hemingway's 1917, § 4504; 1930, § 4641; 1942, § 6981; Law, 1914, ch. 163]

Editor's Note — Former § 71-1-3 concerned the duties of a factory inspector.

Former § 71-1-5 related to the annual reports of a factory inspector.

Former § 71-1-7 provided for penalties for failure to aid to the state factory inspector.

Former § 71-1-9 related to the duties of the state factory inspector to register certain factories.

§ 71-1-11. Repealed.

Repealed by Laws, 1972, ch. 374, § 1, eff from and after July 1, 1972.

[Codes, Hemingway's 1917, § 4505; 1930, § 4642; 1942, § 6982; Laws, 1914, ch. 7; Laws, 1926, ch. 189; Laws, 1934, ch. 292]

Editor's Note — Former § 71-1-11 related to fees for registering establishments with the state factory inspector.

§§ 71-1-13 and 71-1-15. Repealed.

Repealed by Laws, 1974, ch. 515, § 2, eff from and after July 1, 1974.

§ 71-1-13. [Codes, Hemingway's 1917, § 4506; 1930, § 4643; 1942, § 6983; Laws, 1916, ch. 95; Laws, 1926, ch. 189]

§ 71-1-15. [Codes, Hemingway's 1917, § 4507; 1930, § 4644; 1942, § 6984; Laws, 1916, ch. 95; Laws, 1926, ch. 189]

Editor's Note — Former § 71-1-13 concerned the duties of the state factory inspector to furnish forms for reports.

Former § 71-1-15 provided for penalties for an establishment's failure to file reports.

§ 71-1-17. Children under fourteen not to work in mills or factories.

No boy or girl under the age of fourteen (14) years shall be employed or permitted to work in any mill, cannery, workshop, factory, or manufacturing establishment within this state.

SOURCES: Codes, Hemingway's 1917, § 4515; 1930, § 4645; 1942, § 6985; Laws, 1914, ch. 164; Laws, 1924, ch. 314.

Cross References — Crime of enticing children for employment, see § 97-5-7.

JUDICIAL DECISIONS

1. In general.

In a claim for double workman's compensation benefits arising out of the death of a 16-year old boy who was employed by a corporation which cultivated the soil to produce grain which it used to feed cattle which it later sold, the corporation was not a manufacturing establishment within the meaning of § 71-1-17 where the harvested grain was not converted from a raw product into a substantially different substance or material; since the decedent's work activity of entering a grain silo to level shelled corn was incidental to the corporation's farming activities, the decedent's employment was agricultural in nature and the double compensation benefits provided by § 71-3-107 were not recoverable. Dependents of Stafford v. United States Cattle Corp., 389 So. 2d 923 (Miss. 1980).

Employment of minor in violation of law describing age limit is negligence per se, rendering employer liable for injury proximately resulting. Hartwell Handle Co. v. Jack, 149 Miss. 465, 115 So. 586 (1928).

RESEARCH REFERENCES

Am Jur. 48A Am. Jur. 2d, Labor and Labor Relations §§ 2814 et seq.

CJS. 51 C.J.S., Labor Relations § 4.

§ 71-1-19. Child labor in accord with school attendance.

It shall be unlawful for any person, firm, or corporation to employ, detain, or permit to work in any mill, cannery, workshop, factory, or manufacturing establishment in this state any child under the age of fourteen (14) years, or any child over the age of fourteen (14) years and under the age of sixteen (16) years, unless such child has complied with, or is complying with, the compulsory school attendance law. Such employer shall require such child to present the affidavit of the parent or guardian, or person standing in parental relation to such child, and the certificate of the superintendent or principal of the school of the district in which such child or children reside or in which they last attended school, stating the place and date of the birth of such child, the last school attendance of such child, the grade of study pursued, the name of the school, and the name of the teacher in charge. The employer shall preserve such affidavit and keep a complete register of all such affidavits, showing all the facts contained herein.

SOURCES: Codes, Hemingway's 1917, § 4517; 1930, § 4647; 1942, § 6987; Laws, 1914, ch. 164; Laws, 1924, ch. 314; Laws, 1930, ch. 46.

Cross References — Crime of enticing children for employment, see § 97-5-3.

JUDICIAL DECISIONS

1. In general.
2. Construction of prohibited work.
3. Effect of failure to acquire affidavit.

1. In general.

This section [Code 1942, § 6987] must be interpreted by reasoning on principle and according to usual and ordinary sense of words used. Graham v. Goodwin, 170 Miss. 896, 156 So. 513 (1934).

2. Construction of prohibited work.

Employment as master and servant is not necessary under prohibition of this section [Code 1942, § 6987], it being sufficient that child is knowingly permitted or directed to work as if an employee and that permission or direction is by foreman who has supervision of that work. Graham v. Goodwin, 170 Miss. 896, 156 So. 513 (1934).

With respect to what constitutes work in a mill or manufacturing establishment, use of same language in this section [Code 1942, § 6987] as in Hours of Labor Statute (Code 1942, § 6986) in same chapter of code is persuasive of legislative intent that same construction should be put on this section [Code 1942, § 6987] as on other statute, else different phraseology would have been inserted. Graham v. Goodwin, 170 Miss. 896, 156 So. 513 (1934).

Work in rolling billets down ramp of stave mill where worker was in no way affected by machinery or manufacturing or operating part of mill held not within statute prohibiting child labor "in the mill or manufacturing establishment" so as to entitle boy under sixteen years of age to recover for injuries sustained in such work. Graham v. Goodwin, 170 Miss. 896, 156 So. 513 (1934).

3. Effect of failure to acquire affidavit.

Employee 15 years old made prima facie case of negligence contributing to injury by showing employment by defendant without affidavit required. Anderson Mfg. Co. v. Wade, 151 Miss. 820, 119 So. 313 (1928).

If negligence of employee 15 years old contributed to injury his damages should be reduced proportionately, though employed without affidavit. Anderson Mfg. Co. v. Wade, 151 Miss. 820, 119 So. 313 (1928).

If 15 year old boy was employed without affidavit through his fraud and injury was caused solely by his negligence, employer was not liable. Anderson Mfg. Co. v. Wade, 151 Miss. 820, 119 So. 313 (1928).

RESEARCH REFERENCES

ALR. Lawn mowing by minors as violation of child labor statutes. 56 A.L.R.3d 1166.

Am Jur. 48A Am. Jur. 2d, Labor and Labor Relations §§ 2814 et seq.

CJS. 51 C.J.S., Labor Relations § 4.

§ 71-1-21. Regulating hours of labor.

No boy or girl over fourteen (14) years of age and under sixteen (16) years shall be permitted to work in any mill, cannery, workshop, factory, or manufacturing establishment more than eight (8) hours in one (1) day, or more than forty-four (44) hours in any one (1) week, or be employed in or detained in any such establishment between the hours of 7 p.m. and 6 a.m.

SOURCES: Codes, Hemingway's 1917, §§ 4516, 4523; 1930, § 4646; 1942, § 6986; Laws, 1912, ch. 157; Laws, 1914, chs. 164, 169; Laws, 1916, ch. 239; Laws, 1924, ch. 314; Laws, 1981, ch. 439, § 1, eff from and after passage (approved March 30, 1981).

JUDICIAL DECISIONS

1. In general.
2. Establishments subject to regulation.
3. Persons protected.

1. In general.

In an action by an employee between the ages of 16 and 17 years to recover for injuries received while working with machinery, the circuit court properly upheld the denial of double compensation under § 71-3-107 for alleged violation by the employer of the working hours limit set forth in § 71-1-21, but erred in refusing to remand the case to the administrative judge for consideration of the employee's underlying claim. Abel v. Garan, Inc., 385 So. 2d 618 (Miss. 1980).

With respect to what constitutes work in a mill or manufacturing establishment, use of same language in Child Labor Statute (Code 1942, § 6987) as in Hours of Labor Statute in same chapter of code is persuasive of legislative intent that the same construction should be put on Child Labor Statute as on other statute, else different phraseology would have been inserted. Graham v. Goodwin, 170 Miss. 896, 156 So. 513 (1934).

Under Laws 1912, ch. 157 [Code 1942, § 6986] working employees in a manufacturing establishment for more than ten hours in any one day constitutes only one offense. Buckeye Cotton Oil Co. v. State, 103 Miss. 767, 60 So. 775 (1913).

Whether an employee works more than ten hours a day depends upon the fact whether during the hours he is not actually working, he is confined to precincts of the establishment, charged with some responsibility for operation of the machinery. Buckeye Cotton Oil Co. v. State, 103 Miss. 767, 60 So. 775 (1913).

Laws 1912, ch. 157 [Code 1942, § 6986] is a valid exercise of police power. State v. J.J. Newman Lumber Co., 102 Miss. 802, 59 So. 923 (1912), error overruled, 103 Miss. 263, 60 So. 215 (1912).

Regulations of lawful trade or business are within the exercise of the police power unless they are so unreasonable as to unnecessarily and arbitrarily interfere with or destroy property and personal rights of citizens. State v. J.J. Newman Lumber Co., 102 Miss. 802, 59 So. 923 (1912), error overruled, 103 Miss. 263, 60 So. 215 (1912).

Under Art. 4 § 33 Const. 1890, the legislature may enact laws regulating and providing for the safety, health, morals and general welfare of the public. State v. J.J. Newman Lumber Co., 102 Miss. 802, 59 So. 923 (1912), error overruled, 103 Miss. 263, 60 So. 215 (1912).

2. Establishments subject to regulation.

A cotton gin is a manufacturing establishment, and the hours of labor of gin employees are regulated by this section [Code 1942, § 6986]. Lopanic v. Berkeley Coop. Gin Co., 191 So. 2d 108 (Miss. 1966).

Fact that a mill is operated only about five months in each year does not render Laws 1912, ch. 157 [Code 1942, § 6986] inapplicable. Buckeye Cotton Oil Co. v. State, 103 Miss. 767, 60 So. 775 (1913).

Corporation held to be engaged in "manufacturing." Buckeye Cotton Oil Co. v. State, 103 Miss. 767, 60 So. 775 (1913).

3. Persons protected.

A 17-year-old boy employed in a cotton gin, who, on the date that he sustained injuries in the scope and course of his employment, had worked 12 hours a day for 6 days, approximately 72 hours of work, had been employed in violation of the provisions of this section [Code 1942, § 6986], and he was entitled to double compensation benefits for his injuries under the provisions of Code 1942, § 6998-54. Lopanic v. Berkeley Coop. Gin Co., 191 So. 2d 108 (Miss. 1966).

Laws 1916, ch. 239 [Code 1942, § 6986] applies only to employees working with or around machinery, and does not apply to an employee unloading from cars lumber which other employees were taking to the planing machines. Handy v. Mercantile Lumber Co., 121 Miss. 489, 83 So. 674 (1920).

Laws 1912, ch. 157 [Code 1942, § 6986] applies only to such employees of a manufacturing establishment who compose the organized force and work with machinery, whose work supplements that of the machinery and must be performed at the same time in order to keep the machinery in operation. Buckeye Cotton Oil Co. v. State, 103 Miss. 767, 60 So. 775 (1913).

Statement that an employee had general supervision of the operation of the mill held insufficient to show whether or not he was within the protection of Laws 1912, ch. 157 [Code 1942, § 6986]. Buckeye Cotton Oil Co. v. State, 103 Miss. 767, 60 So. 775 (1913).

RESEARCH REFERENCES

ALR. Lawn mowing by minors as violation of child labor statutes. 56 A.L.R.3d 1166.

Who is employed in "professional capacity," within exemption, under 29 USCS § 213(a)(1), from minimum wage and maximum hours provisions of Fair Labor Standards Act. 77 A.L.R. Fed. 681.

Am Jur. 48A Am. Jur. 2d, Labor and Labor Relations §§ 2814 et seq.

CJS. 51B C.J.S., Labor Relations, §§ 1307, 1311, 1314.

Practice References. Bender's Labor and Employment Bulletin (Matthew Bender).

Employee Rights Litigation: Pleading and Practice (Matthew Bender).

Labor and Employment Law (Matthew Bender).

National Labor Relations Act: Law and Practice (Matthew Bender).

Laurie E. Leader, Wages and Hours: Law and Practice (Matthew Bender).

Shawe and Rosenthal, Employment Law Deskbook (Matthew Bender).

§ 71-1-23. Sheriff to enforce law.

It shall be the special duty of the sheriff of the county in which the mill, cannery, workshop, factory, or manufacturing establishment employing child labor is located to visit, at least once each month, such mill, cannery, workshop, factory, or manufacturing establishment to see to the enforcement of this chapter.

SOURCES: Codes, Hemingway's 1917, § 4518; 1930, § 4648; 1942, § 6988; Laws, 1914, ch. 164; Laws, 1924, ch. 314.

Cross References — Duty of sheriff with offenders, see § 19-25-67.

§ 71-1-25. County health officer to inspect.

It shall be the duty of the county health officer to visit, without notice of his intention to do so, all mills, canneries, workshops, factories, or manufacturing establishments employing child labor within his county at least twice each year, or oftener if requested by the sheriff, and to promptly report to the sheriff any unsanitary condition of the premises, any child or children afflicted with infectious, contagious, or communicable diseases, or whose physical condition renders such child or children incapacitated to perform the work required of them. The sheriff shall promptly remove such child or children from such mill, cannery, workshop, factory, or manufacturing establishment, and order the premises put in sanitary condition. The judgment of the county health officer as to the physical condition of the children and the sanitary condition of the premises shall be final and conclusive.

SOURCES: Codes, Hemingway's 1917, § 4519; 1930, § 4649; 1942, § 6989; Laws, 1914, ch. 164; Laws, 1924, ch. 314.

Cross References — Appointment of county health officer, see § 41-3-37.

RESEARCH REFERENCES

Am Jur. 61 Am. Jur. 2d, Plant and Job Safety — OSHA and State Laws §§ §§ 54-57, 59-62, 64, 65.

CJS. 51 C.J.S., Labor Relations § 3.

§ 71-1-27. Misdemeanor to fail or refuse to obey order of officer.

Any officer, manager, or superintendent of any mill, cannery, workshop, factory, or manufacturing establishment in which child labor is employed who shall fail or refuse to give true and correct information demanded of him by any officer hereinbefore directed to inspect such mill, cannery, workshop, factory, or manufacturing establishment, or who shall fail or refuse to obey any lawful order of the sheriff or health officer of the county in which said mill, cannery, workshop, factory, or manufacturing establishment is located for carrying out the purpose of this chapter, shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than Ten Dollars ($10.00) nor more than One Hundred Dollars ($100.00).

SOURCES: Codes, Hemingway's 1917, § 4521; 1930, § 4650; 1942, § 6990; Laws, 1914, ch. 164; Laws, 1924, ch. 314.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 71-1-29. Misdemeanor to violate child labor laws.

Any person, firm, or corporation, or the superintendent or any officer of the mill, cannery, workshop, factory, or manufacturing establishment employing any child, or permitting any child to be employed by or to work in, or to be detained in any mill, cannery, workshop, factory, or manufacturing establishment in this state contrary to law shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than Fifty Dollars ($50.00) nor more than One Hundred Dollars ($100.00), or may be sentenced to the county jail for not less than ten (10) days nor more than sixty (60) days, or both such fine and imprisonment.

SOURCES: Codes, Hemingway's 1917, § 4522; 1930, § 4651; 1942, § 6991; Laws, 1914, ch. 164; Laws, 1924, ch. 314.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 48A Am. Jur. 2d, Labor and Labor Relations §§ 2814 et seq.

§ 71-1-31. Certain canneries excepted.

The provisions of Sections 71-1-17 through 71-1-29 shall not apply to fruit or vegetable canneries.

SOURCES: Code, 1930, § 4652; 1942, § 6992; Laws, 1924, ch. 314.

§ 71-1-33. Repealed.

Repealed by Laws, 1981, ch. 310, § 1, eff from and after passage (approved March 2, 1981).

[Codes, Hemingway's 1917, § 4527; 1930, § 4653; 1942, § 6993; Laws, 1914, ch. 165]

Editor's Note — Former § 71-1-33 made provisions for work hours for females.

§ 71-1-35. Pay of employees twice a month.

(1) Every corporation, company, association, partnership and individual person engaged in manufacturing of any kind in this state employing as many as fifty (50) or more employees and employing public labor, and every public service corporation doing business in this state shall be required to make full payment to employees for services performed as often as once every two (2) weeks or twice during each calendar month, or on the second and fourth Saturday, respectively, of each month. Such payment or settlement shall include all amounts due for labor or services performed up to not more than ten (10) days previous to the time of payment, except that public service corporations shall not be required to make payment for labor or services performed up to more than fifteen (15) days prior to the time of payment.

(2) For the purposes of this section, the term "employee" shall not include any individual employed in a bona fide executive, administrative or professional capacity.

SOURCES: Codes, Hemingway's 1917, § 4530; 1930, § 4654; 1942, § 6994; Laws, 1916, ch. 241; Laws, 1991, ch. 407, § 1, eff from and after July 1, 1991.

Cross References — Lien for wages due, see §§ 85-7-1 et seq.

RESEARCH REFERENCES

ALR. Validity of minimum wage statutes relating to private employment. 39 A.L.R.2d 740.

Promise by employer to pay bonus as creating valid and enforceable contract. 43 A.L.R.3d 503.

Who is employed in "professional capacity," within exemption, under 29 USCS § 213(a)(1), from minimum wage and maximum hours provisions of Fair Labor Standards Act. 77 A.L.R. Fed. 681.

Am Jur. 48A Am. Jur. 2d, Labor and Labor Relations §§ 2814 et seq.

7B Am. Jur. Legal Forms 2d, Employment Contracts § 99:126 (compensation of employee; time of payment of salary-semimonthly).

22 Am. Jur. Proof of Facts 2d 643, Employee's Right to Compensation for Extra Services Requested by Employer.

CJS. 51B C.J.S., Labor Relations § 1299.

Practice References. Bender's Labor and Employment Bulletin (Matthew Bender).

Employee Rights Litigation: Pleading and Practice (Matthew Bender).

Labor and Employment Law (Matthew Bender).

National Labor Relations Act: Law and Practice (Matthew Bender).

Laurie E. Leader, Wages and Hours: Law and Practice (Matthew Bender).

Shawe and Rosenthal, Employment Law Deskbook (Matthew Bender).

§ 71-1-37. Discounting trade checks prohibited.

Every person, company, association, partnership, manufacturing company, or railroad company now existing or hereafter organized in this state engaged in employing labor for manufacturing purposes, or any railroad within this state shall be prohibited from discounting any trade check, coupons, or other written instrument issued for the payment of such labor. It shall be unlawful for any person, partnership, corporation, or trade establishment purchasing said trade checks, coupons, or other instruments issued for the payment of such labor to discount the same. Any person, partnership, corporation, or trade establishment purchasing the same at a discount, or any company, corporation, railroad, or other person issuing said checks, coupons, or other written instruments who shall discount the same in settlement with the employees shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than Ten Dollars ($10.00) and not more than Fifty Dollars ($50.00) for each offense.

SOURCES: Codes, Hemingway's 1917, § 4532; 1930, § 4656; 1942, § 6996; Laws, 1914, ch 138.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 48A Am. Jur. 2d, Labor and Labor Relations §§ 2814 et seq.

CJS. 51B C.J.S., Labor Relations § 1302.

§ 71-1-39. Trade checks must be paid in cash.

All persons, firms, or corporations engaged in manufacturing and issuing trade checks, coupons, or other instruments of writing in payment for labor shall, on or after the regular pay day, cash said check or checks so issued at their face value less any amount that may be due by the party to whom issued. Any such person, firm, or corporation so engaged in manufacturing and failing to settle such claim as herein required shall be liable to pay to the holder thereof twenty-five per cent. (25%) on the face of said check as damages in the event any suit or action shall be brought to enforce the payment thereof. This section shall only apply when the amount claimed is One Hundred Dollars ($100.00) or less.

SOURCES: Codes, Hemingway's 1917, § 4533; 1930, § 4657; 1942, § 6997; Laws, 1914, ch. 138.

JUDICIAL DECISIONS

1. In general.

Trade checks providing on their face that they were not transferable did not violate Code 1906, § 4001, providing that all promissory notes, and other writings for the payment of money, or other thing, may be assigned by indorsement whether the same be payable to order or assigns. Moody v. Finkbine Lumber Co., 122 Miss. 407, 84 So. 385 (1920).

RESEARCH REFERENCES

Am Jur. 48A Am. Jur. 2d, Labor and Labor Relations §§ 3818 et seq.

CJS. 51B C.J.S., Labor Relations §§ 1302, 1303 et seq.

§ 71-1-41. Employee trust plan.

A trust of real or personal property, or real and personal property combined, created either heretofore or hereafter by an employer as part of a pension plan, disability or death benefit plan, or profit-sharing plan for the exclusive benefit of some or all of his or its employees, to which contributions are made by such employer or employees, or both, for the purpose of distributing to such employees the earnings and the principal of such trust, shall not be deemed to be invalid as violating any existing laws against perpetuities, restraints on alienation, suspension of the power of alienation, or the accumulation of income; but such a trust may continue for such time as may be necessary to accomplish the purpose for which it may be created.

No trust of real or personal property, or real and personal property combined, created either heretofore or hereafter under a retirement plan for which provision has been made under the laws of the United States of America exempting such trust from federal income tax shall be deemed to be invalid as violating any existing laws against perpetuities, restraints on alienation, suspension of the power of alienation of title to property, or the accumulation of income; but such a trust may continue for such time as may be necessary to accomplish the purposes for which it may be created, may be permitted to accumulate the income arising from the property held therein until such time as such income shall become distributable to the beneficiary or beneficiaries under the terms of the trust, may according to its terms be made irrevocable, and the interests of its beneficiary or beneficiaries therein may be made nontransferable by assignment or otherwise.

SOURCES: Codes, 1942, § 6995.5; Laws, 1954, ch. 205.

Cross References — Public employees' retirement and disability benefits, see §§ 25-11-101 et seq.

Federal Aspects — Employee Retirement Income Security Act, see 29 USCS §§ 1001 et seq.

RESEARCH REFERENCES

ALR. Construction and operation of private pension plan for distribution of pension funds upon termination of plan. 55 A.L.R.3d 767.

What constitutes order made pursuant to state domestic relations law for purposes of qualified domestic relations order exception to antialienation provision of Employee Retirement Income Security Act of 1974 (29 USCS § 1056(d)). 79 A.L.R.4th 1081.

§ 71-1-43. Income or principal of employee trust plan not to be encumbered.

The income or principal payable to a beneficiary or beneficiaries under any trust created by an employer as part of a pension plan, disability or death benefit plan, profit-sharing plan, or under any trust created under a retirement plan for which provision has been made under the laws of the United States of America exempting such trust from federal income tax shall not be pledged, assigned, transferred, sold, or in any manner whatsoever accelerated, anticipated, or encumbered by the beneficiary or beneficiaries. Nor shall any income or principal be in any manner subject or liable in the hands of the trustee for the debts, contracts, or engagements of the beneficiary or beneficiaries, or be subject to any assignment or other involuntary alienation or disposition whatsoever. Nor shall any income or principal be subject to the levy of any execution, writ of attachment, or garnishment thereon.

SOURCES: Codes, 1942, § 6995.3; Laws, 1954, ch. 206.

Cross References — Remedy by attachment, see §§ 11-33-1, 11-33-23.

Suggestion of exemption from garnishment, see § 11-35-33.

Levy of execution and attachment, see §§ 13-3-123 et seq.

Property exempt from taxation, see §§ 27-31-1 et seq.

Descent of exempt property, see §§ 91-1-19 et seq.

Federal Aspects — Employee Retirement Income Security Act, see 29 USCS §§ 1001 et seq.

JUDICIAL DECISIONS

1. In general.

Bankruptcy debtor's exemption claims in his simplified employee pension-individual retirement accounts (SEP-IRA) extended only to amounts reasonably necessary for support of debtor as well as of any dependents. In re Henderson, 167 B.R. 67 (Bankr. N.D. Miss. 1993).

RESEARCH REFERENCES

ALR. Private pension plan: construction of provision authorizing employer to terminate or modify plan. 46 A.L.R.3d 464.

Right of trustee of land having interest therein to purchase on his own behalf in association with foreclosure by third-party lienor, in absence of express trust provision. 30 A.L.R.4th 732.

What constitutes order made pursuant to state domestic relations law for purposes of qualified domestic relations order exception to antialienation provision of Employee Retirement Income Security Act of 1974 (29 USCS § 1056(d)). 79 A.L.R.4th 1081.

§ 71-1-45. Assignment or pledge of wages.

No assignment or pledge of wages, in any form, made or executed directly or collaterally in the payment of, or as security for, the purchase of or contract to purchase any goods, wares, or merchandise shall be valid against or binding upon any employer, or the wages of any employee in the hands of, or owing, or to become owing to such employee, unless the assignee or pledgee thereof shall, prior to the delivery of the goods, wares, or merchandise so purchased or prior to consummation of any contract to purchase the same, serve upon the employer of such assignor, or pledgor, a duly executed copy of such assignment, or pledge, or contract to purchase and obtain such employer's acceptance of notice thereof and agreement in writing to be bound by the terms of such assignment or pledge.

SOURCES: Codes, 1942, § 275; Laws, 1940, ch. 291.

RESEARCH REFERENCES

ALR. Law governing assignment of wages or salary. 1 A.L.R.3d 927.

Garnishee's duty to give debtor notice of garnishment prior to delivery of money without judgment against the garnishee on the debt. 36 A.L.R.4th 824.

Validity and enforceability of provision that employer shall be liable for stipulated damages on breach of employment contract. 40 A.L.R.4th 285.

Am Jur. 6 Am. Jur. 2d, Assignments §§ 64 et seq., 81.

2B Am. Jur. Legal Forms 2d, Assignments §§ 25:11 et seq. (wages); §§ 25:211 et seq. (consent to assignment).

§ 71-1-47. Denial or abridgment of work.

It is hereby declared to be the public policy of Mississippi that the right of a person or persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization:

(a) Any agreement or combination between any employer and any labor union or labor organization whereby any person not a member of such union or organization shall be denied the right to work for an employer, or whereby such membership is made a condition of employment or continuation of employment by such employer, or whereby any such union or organization acquires an employment monopoly in any enterprise, is hereby declared to be an illegal combination or conspiracy and against public policy.

(b) No person shall be required by an employer to become or remain a member of any labor union or labor organization as a condition of employment or continuation of employment by such employer.

(c) No person shall be required by an employer to abstain or refrain from membership in any labor union or labor organization as a condition of employment or continuation of employment.

(d) No employer shall require any person, as a condition of employment or continuation of employment, to pay any dues, fees, or other charges of any kind to any labor union or labor organization.

(e) Any person who may be denied employment or be deprived of continuation of his employment in violation of any paragraph of this section shall be entitled to recover from such employer and from any other person, firm, corporation, or association acting in concert with him, by appropriate action in the courts of this state, such actual damages as he may have sustained by reason of such denial or deprivation of employment.

(f) The provisions of this section shall not apply to any lawful contract now in force, but they shall apply to all contracts hereafter entered into and to any renewal or extension of an existing contract hereafter occurring.

(g) The provisions of this section shall not apply to any employer or employee under the jurisdiction of the Federal Railway Labor Act.

SOURCES: Codes, 1942, § 6984.5; Laws, 1954, ch. 249, §§ 1, 2.

Federal Aspects — Railway Labor Act, see 45 USCS §§ 151 et seq.

JUDICIAL DECISIONS

1. In general.

Although an allegation that an applicant for employment must agree to permit the employer to deduct a designated amount from his paycheck, which is then sent to the union, could constitute a violation of this section, the court did not have jurisdiction over the subject matter where plaintiff failed to allege a jurisdictional basis for the court to hear such a claim. MacKenzie v. Local 624, 472 F. Supp. 1025 (N.D. Miss. 1979).

RESEARCH REFERENCES

ALR. Validity and construction of "right to work" laws. 92 A.L.R.2d 598.

Liability, under statute, of labor union or its membership for torts committed in connection with primary labor activities-state cases. 85 A.L.R.4th 979.

What interrogation by employer's owner or executive officer during union organizing campaign constitutes unfair labor practice. 92 A.L.R. Fed. 461.

Employer's statements, during union organizational campaign, to effect that plant or business will close or relocate if union is successful as unfair labor practice under 29 USCS § 158(a)(1), (c). 93 A.L.R. Fed. 335.

What interrogation by plant manager or superintendent during union organizing campaign constitutes unfair labor practice. 93 A.L.R. Fed. 580.

What interrogation by department manager, supervisor, or foreman during union organizing campaign constitutes unfair labor practice. 94 A.L.R. Fed. 140.

Pre-emption, by § 301(a) of Labor-Management Relations Act of 1947 (29 USCS § 185(a)), of employee's state-law action for infliction of emotional distress. 101 A.L.R. Fed. 395.

"Mass discharge" of employees as evidence of unfair labor practice under §§ 8(a)(1) and (3) of National Labor Relations Act (29 USCS § 158(a)(1), (3)). 137 A.L.R. Fed. 445.

Am Jur. 48 Am. Jur. 2d, Labor and Labor Relations § 1068.

10A Am. Jur. Legal Forms 2d, Labor and Labor Relations §§ 159:12 et seq. (organization of employees).

10A Am. Jur. Legal Forms 2d, Labor and Labor Relations §§ 159:49 et seq. (collective bargaining agreements).

35 Am. Jur. Proof of Facts 2d 209, Harassment or Termination of Employee Due to Religious Beliefs or Practices.

CJS. 51 C.J.S., Labor Relations § 10.

Lawyers' Edition. Union activities violating the federal antitrust laws—federal cases. 20 L. Ed. 2d 1528.

Law Reviews. Unionization of the Legal Profession. 50 Miss. L. J. 451, June 1979.

Practice References. Bender's Labor and Employment Bulletin (Matthew Bender).

Employee Rights Litigation: Pleading and Practice (Matthew Bender).

Labor and Employment Law (Matthew Bender).

National Labor Relations Act: Law and Practice (Matthew Bender).

Shawe and Rosenthal, Employment Law Deskbook (Matthew Bender).

§ 71-1-49. Certain persons prohibited from labor management functions.

(1) No person who is an alien, or who is or has been a member of the Communist Party, or who has been convicted of or served any part of a prison term resulting from his conviction of robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, or conspiracy to commit any such crimes, shall serve:

(a) as an officer, director, trustee, member of any executive board or similar governing body, business agent, manager, organizer, or other employee (other than as an employee performing exclusively clerical or custodial duties) of any labor organization, or as a manager, or any person occupying a bargaining position with industry, or

(b) as a labor relations consultant either of a labor organization or of an employer or both, or as an officer, director, agent, or employee (other than as an employee performing exclusively clerical or custodial duties) of any group or association of employers dealing with any labor organization, during or for five (5) years after the termination of his membership in the Communist Party, or for five (5) years after such conviction, or after the end of such imprisonment. No labor organization, group or association of employers, or officer thereof shall knowingly permit any person to assume or hold any office or paid position in violation of this section.

(2) Any person who willfully violates this section shall be guilty of a misdemeanor and, upon conviction thereof, be fined not more than One Thousand Dollars ($1,000.00) or imprisoned for not more than one (1) year, or both.

(3) For the purposes of this section, any person shall be deemed to have been "convicted" and under the disability of "conviction" from the date of the judgment of the trial court or the date of the final sustaining of such judgment on appeal, whichever is the later event, regardless of whether such conviction occurred before or after July 1, 1960.

SOURCES: Codes, 1942, § 6984.7; Laws, 1960, ch. 251, §§ 1-5.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 48 Am. Jur. 2d, Labor and Labor Relations §§ 1159 et seq.

CJS. 51 C.J.S., Labor Relations §§ 55, 119.

§ 71-1-51. Repealed.

Repealed by Laws, 1974, ch. 500, § 21, eff from and after passage (approved April 2, 1974).

[Codes, 1942, § 6998; Laws, 1934, ch. 295]

Editor's Note — Former § 71-1-51 concerned inspection of steam boilers.

§ 71-1-53. Penalty for violation of this chapter.

Any corporation or person or manager of any company or partnership who violates any of the provisions of this chapter for which a penalty is not otherwise provided shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than Twenty-five Dollars ($25.00) nor more than Two Hundred Fifty Dollars ($250.00) for each offense; and each day's violation shall constitute a separate offense.

SOURCES: Codes, Hemingway's 1917, § 4531; 1930, § 4655; 1942, § 6995; Laws, 1914, ch. 167.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 71-1-55. Discrimination against breast-feeding mother who uses lawful break time to express milk prohibited.

No employer shall prohibit an employee from expressing breast milk during any meal period or other break period provided by the employer.

SOURCES: Laws, 2006, ch. 520, § 12, eff from and after passage (approved Apr. 3, 2006.)

CHAPTER 3

Workers' Compensation

General Provisions 71-3-1
Mississippi Workers' Compensation Self-Insurer Guaranty Association Law 71-3-151
Drug-Free workplace Workers' Compensation Premium Reduction Act 71-3-201

GENERAL PROVISIONS

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§ 71-3-1. Citation; purpose; construction.

This chapter shall be known and cited as "Workers' Compensation Law," and shall be administered by the workers' compensation commission, hereinafter referred to as the "commission," cooperating with other state and federal authorities for the prevention of injuries and occupational diseases to workers and, in event of injury or occupational disease, their rehabilitation or restoration to health and vocational opportunity; and this chapter shall be fairly construed according to the law and the evidence.

Wherever used in this chapter, or in any other statute or rule or regulation affecting the former workmen's compensation law and any of its functions or duties:

(a) The words "workmen's compensation" shall mean "workers' compensation"; and

(b) the word "commission" shall mean the workers' compensation commission.

SOURCES: Codes, 1942, § 6998-01; Laws, 1948, ch. 354, § 1; Laws, 1960, ch. 275; Laws, 1968, ch. 559, § 1; reenacted without change, Laws, 1982, ch. 473, § 1; Laws, 1984, ch. 408; reenacted without change, Laws, 1990, ch. 405, § 1, eff from and after July 1, 1990.

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2. Validity of statute.
3. Construction.
4. —Causal connection.
5. —Status of employee.
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7. —Exclusiveness of remedy.
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1. In general.

Workers' Compensation Act contemplates three-party agreement among employer, employee, and compensation insurance carrier. Although employer is considered to be insured party, Act views employee as intended beneficiary of insurance contract. Thus, when employer-insured contracts with insurer for benefit of its employee-third party beneficiary, insurer owes same duty to designate a third party as it owes to insured, entity which actually makes contract. McFadden v. Liberty Mut. Ins. Co., 803 F. Supp. 1178 (N.D. Miss. 1992), aff'd, 988 F.2d 1210 (5th Cir. 1993).

An employee's injury did not arise out of and in the course of his employment as a sack boy at a grocery store where the injury occurred when a firecracker which the employee had been given by another worker exploded in his hand, and the store had a policy of no foul play, which included fireworks, so that the employee's conduct was against the rules of the business; the accident and injury were the result of the employee's own misuse of and involvement with an object which was prohibited and outside the scope of the employee's employment, and therefore the injury sustained was not compensable. Mathis v. Nelson's Foodland, Inc., 606 So. 2d 101 (Miss. 1992).

Decisions of the Mississippi Workers' Compensation Commission on issues of fact will not be overturned if they are supported by substantial evidence. The Commission is the trier of facts as well as the judge of the credibility of the witnesses. Doubtful cases should be resolved in favor of compensation so as to fulfill the beneficial purposes of the statute. Miller Transporters, Inc. v. Guthrie, 554 So. 2d 917 (Miss. 1989).

The Workers' Compensation Commission has no authority to grant declaratory judgments, render advisory opinions, or try equitable issues, or other issues, outside the statutes. Bullock v. Roadway Express, Inc., 548 So. 2d 1306 (Miss. 1989).

In doubtful cases, the doubt would be resolved in favor of compensation so that the purpose of the Workmen's Compensation Act may be carried out. Barham v. Klumb Forest Prods. Ctr., Inc., 453 So. 2d 1300 (Miss. 1984).

It was never the intent of the legislature by enacting the workmen's compensation law to impair the lawful right to contract. Granite State Ins. Co. v. Marshall, 275 So. 2d 386 (Miss. 1973).

The Mississippi Workmen's Compensation Commission is vested with full and complete jurisdiction to hear and determine claims for benefits under the Workmen's Compensation Law. Everitt v. Lovitt, 192 So. 2d 422 (Miss. 1966).

The purpose of the Workmen's Compensation Law is to facilitate the payment of compensation without delay and without unnecessary cost. H.C. Moody & Sons v. Dedeaux, 223 Miss. 832, 79 So. 2d 225 (1955).

One of the primary purposes of the Workmen's Compensation Law is to relieve society of the burden of supporting in orphanages or public almshouses helpless children, who have been left without means of support because of the death of wage earners who have lost their lives in industrial accidents, and the benefits of the Law are not limited to children begotten in lawful wedlock. Stanley v.

McLendon, 220 Miss. 192, 70 So. 2d 323 (1954).

2. Validity of statute.

The Workmen's Compensation Law does not violate the constitutional provision that the circuit court shall have original jurisdiction in all matters civil and criminal in the state, not vested by the constitution in some other court. Hartfield v. Standard Oil Co., 220 Miss. 569, 71 So. 2d 449 (1954).

The Workmen's Compensation Law does not violate the constitutional provision that judges of the civil courts of the state shall, before they proceed to execute the duties of the respective offices, take specified oath or affirmation. Allen v. R.G. Le Tourneau, Inc., 220 Miss. 520, 71 So. 2d 447 (1954).

The Workmen's Compensation Law does not violate the due process provisions of the state constitution in that it abrogates right of action for personal injuries recognized by the common law, or right of action for personal injury and wrongful death created by statutes; or because it subjects the employer to liability for compensation to his injured employee without regard to any neglect or default on the part of the employer or any other person for whom he is responsible; or because the employee's rights are interfered with, in that he is prevented from having compensation for injuries arising from the employer's fault commence with the damages actually sustained, and is limited to the measure of the compensation prescribed by the Law; or because both the employer and the employee are deprived of their liberty to acquire property by being prevented from making such agreement as they may choose to make respecting terms of employment. Walters v. Blackledge, 220 Miss. 485, 71 So. 2d 433 (Miss. 1954).

The Workmen's Compensation Law is not invalid because it undertakes to put all laborers or employees in one class, or because it undertakes to compensate persons of widely differing rights, or persons of widely differing ages, or persons of widely differing responsibilities as to their families under one standard of compensation. Walters v. Blackledge, 220 Miss. 485, 71 So. 2d 433 (Miss. 1954).

The Workmen's Compensation Law is not unconstitutional because it makes no discrimination between employees who have been guilty of negligence and employees who have exercised due care or because it denies the injured employee the right to have damages assessed by a jury according to the conventional methods of the common law. Walters v. Blackledge, 220 Miss. 485, 71 So. 2d 433 (Miss. 1954).

The Workmen's Compensation Law does not impair right of employer and employee to contract. Walters v. Blackledge, 220 Miss. 485, 71 So. 2d 433 (Miss. 1954).

The Workmen's Compensation Law does not violate constitutional provision that the right of trial by jury shall remain inviolate inasmuch as that provision guarantees a jury trial only in those cases where a jury was necessary according to the principles of common law. Walters v. Blackledge, 220 Miss. 485, 71 So. 2d 433 (Miss. 1954).

The Workmen's Compensation Law does not violate constitutional provision providing that all courts shall be open and that every person, for an injury done him in his lands, goods, person or reputation, shall have the remedy by due process of law, and that right and justice shall be administered without sale, denial or delay. Walters v. Blackledge, 220 Miss. 485, 71 So. 2d 433 (Miss. 1954).

Workmen's Compensation Law which allows payments of compensation to acknowledged illegitimate child dependent upon deceased's labor, and to bigamous wife upon death of the putative husband is not repugnant to the Constitution nor any public policy in regard to bigamy. Pathfinder Coach Div. of Superior Coach Corp. v. Cottrell, 216 Miss. 358, 62 So. 2d 383 (1953).

3. Construction.

Circuit court properly reversed an order of Mississippi's Workers' Compensation Commission because an employer was obligated to furnish surgical intervention that a competent treating physician deemed necessary and reasonable, even though another treating physician disagreed with the recommendation. Hardaway Co. v. Bradley, 881 So. 2d 241 (Miss. Ct. App. 2003).

Provisions of the Workers' Compensation Act are to be construed liberally, and doubtful cases are to be resolved in favor of compensation so that beneficent purposes of Act may be achieved. Holbrook ex rel. Holbrook v. Albright Mobile Homes, Inc., 703 So. 2d 842 (Miss. 1997).

Workers' Compensation claims, and laws that govern them, are to be construed broadly and liberally in favor of claimant. Mississippi Transp. Comm'n v. Dewease, 691 So. 2d 1007 (Miss. 1997).

The workers' compensation law is construed liberally and doubtful cases are to be resolved in favor of compensation so that the beneficent purposes of the act may be achieved. Robinson v. Packard Elec. Div., GMC, 523 So. 2d 329 (Miss. 1988).

To totally bar an injured employee of an independent contractor performing work on the premises of another from recovering on a third-party claim against that landowner for injuries sustained as a result of negligence on the part of one of such landowner's employees who was not a loaned servant of the independent contractor would totally undermine the purpose, letter and spirit of the Mississippi Workman's Compensation Act. Ramsey v. Georgia-Pacific Corp., 511 F. Supp. 393 (S.D. Miss. 1981), aff'd, 671 F.2d 1376 (5th Cir. 1982), reh'g denied, 673 F.2d 1321 (5th Cir. 1982).

A route salesman who stopped to assist an apparently disabled motorist and who was rendered permanently and totally disabled when the motorist struck him with a gun was entitled to workmen's compensation, despite the employer's contention that his injuries did not arise out of and in the course of his employment within the meaning of § 71-3-3(b); an employer may reasonably foresee that his traveling employee will stop to aid a distressed motorist when implored to do so, and since the present claimant's injury resulted from a humanitarian act which was literally thrown into his path because of his employment, the employee was entitled to compensation. The singular purpose pervading the Workmen's Compensation Act is to promote the welfare of laborers within the state, and it should be construed fairly to further its humanitarian aims. Big "2" Engine Rebuilders v. Freeman, 379 So. 2d 888 (Miss. 1980).

The 1960 amendment to this section [Code 1942, § 6998-01] which added the statement that the Workmen's Compensation Law should be "fairly construed" is not indicative of any ascertainable or judicially determinable legislative intent, and did not abrogate the rule of liberal construction. L.B. Priester & Son v. Bynum's Dependents, 244 Miss. 196, 142 So. 2d 30 (1962), overruled on other grounds, Wilson v. Mississippi Emp. Sec. Comm'n, 643 So. 2d 538 (Miss. 1994).

The 1960 amendment to this section [Code 1942, § 6998-01] stating that "this act shall be fairly construed according to the law and the evidence" did not cause any substantive change in its interpretation and application, since the same purpose manifestly and necessarily existed when the original statute was enacted in 1948. L.B. Priester & Son v. Bynum's Dependents, 244 Miss. 196, 142 So. 2d 30 (1962), overruled on other grounds, Wilson v. Mississippi Emp. Sec. Comm'n, 643 So. 2d 538 (Miss. 1994).

The Workmen's Compensation Law must receive a common-sense and a liberal construction in the light of the legislative purpose. Ross v. Ross, 240 Miss. 84, 126 So. 2d 512 (1961).

The amendment of 1960 substituting a fair interpretation for the previous liberal interpretation of the Workmen's Compensation Law is not applicable to cases of injuries sustained prior thereto. Mississippi Hwy. Patrol v. Neal's Dependents, 239 Miss. 505, 125 So. 2d 544 (1960).

There should be accorded to the Workmen's Compensation Law a broad, liberal construction that doubtful cases should be resolved in favor of compensation and that the humane purposes for which these acts seek to serve leave no room for narrow technical constructions. Central Elec. Power Ass'n v. Hicks, 236 Miss. 378, 112 So. 2d 230 (1959).

The Workmen's Compensation Law is to be liberally construed. Employers Liab. Ins. Co. v. Haltom, 235 Miss. 74, 108 So. 2d 29 (1959).

Under the Workmen's Compensation Law a minor employee may maintain a suit for compensation benefits and may receive payments, in the absence of statutory provisions to the contrary. H.C. Moody & Sons v. Dedeaux, 223 Miss. 832, 79 So. 2d 225 (1955).

Although evasions of coverage under the Workmen's Compensation Law should not be permitted, the courts must balance the terms of this legislation against the rights of persons to create a legitimate contractual relationship of vendor and vendee. Nelson v. Slay, 216 Miss. 640, 63 So. 2d 46 (1953).

A denial of an award, however harsh it may be construed by an employee, points up the purpose of the Workmen's Compensation Law to grant compensation under liberal interpretation, and at the same time to require, in the interest of the carrier of the employer, compliance with the prerequisite conditions. Ingalls Shipbuilding Corp. v. Byrd, 215 Miss. 234, 60 So. 2d 645 (1952).

The Workmen's Compensation Law should be given a liberal interpretation in order to effect its salutary purposes but sight must not be lost of the fact that it is the duty of the court to construe the Law as it is written. Brookhaven Steam Laundry v. Watts, 214 Miss. 569, 55 So. 2d 381 (1951).

4. —Causal connection.

The Workers' Compensation Commission's denial of benefits to an asthmatic employee would be reversed, even though a physician testified that there was not a "strong work-related causal connection between [the employee's] pneumonia and emphysema," where medical testimony established a causal connection between the exacerbation of her pre-existing respiratory problems and the inhalation of irritants in her work environment, and the employee's uncontroverted testimony of the onset pain in her side and back along with shortness of breath while she was performing her job duties established that her injury arose out of and in the course of her employment. Hedge v. Leggett & Platt, Inc., 641 So. 2d 9 (Miss. 1994).

A circuit court judgment affirming the Workers' Compensation Commission's denial of benefits to a deceased employee's children was not supported by substantial evidence and would be reversed where the onset of the employee's death occurred at her place of employment and the employer failed to rebut the presumption that the employee's work activities did not cause or contribute to the condition from which she died; the unrebutted "found dead" legal presumption prevailed, satisfying the causal connection between the employee's work duties and the condition which resulted in her death. Nettles v. Gulf City Fisheries, Inc., 629 So. 2d 554, 47 A.L.R.5th 977 (Miss. 1993).

A groundskeeper's aid was not acting within the scope of his employment when he drowned in a swimming pool, and therefore his parents were not barred by the exclusive remedy provisions of the Mississippi Workers' Compensation Act from bringing a wrongful death action on his behalf, where the employee was not required by his job duties to be in the vicinity of the swimming pool, he was supposed to be hoeing grass from a sidewalk outside the fence surrounding the pool at the time he entered the pool area, and the employer had specifically instructed the employee to stay away from the pool because he could not swim. Estate of Brown v. Pearl River Valley Opportunity, Inc., 627 So. 2d 308 (Miss. 1993).

A claimant failed to make the requisite showing that her mental condition was causally connected to her employment where 2 doctors testified that the claimant had suffered from psychological disorders prior to the incident alleged to have caused her mental injury, the Workers' Compensation Commission found the testimony of another doctor, who diagnosed the claimant as having severe post-traumatic stress disorder and major depression with some psychotic symptoms, to be unconvincing, and the incident alleged to have caused the claimant's mental injury-a private meeting with her supervisor during which the supervisor threatened to fire her-was not an "untoward event." Bates v. Countrybrook Living Ctr., 609 So. 2d 1247 (Miss. 1992).

The evidence was sufficient to support the Workers' Compensation Commission's finding that a claimant's hypertension was work-related, thus obliging the claimant's former employer to pay for medical expenses incurred by the claimant for periodic checkups for his hypertensive condition as ordered by his treating physician, where the claimant began to experience tension, anxiety and stomach problems, which the physician diagnosed as hypertension, during the time the claimant worked for the employer, and the physician concluded that the claimant's job caused him to experience significant stress which aggravated his hypertensive condition so as to require him to take a medical leave of absence. Berry v. Universal Mfg. Co., 597 So. 2d 623 (Miss. 1992).

The evidence was sufficient to support the Workers' Compensation Commission's finding that an employee's mental disability was caused by a deliberate course of conduct by his employer and that there was nothing in his psychological background to suggest a pre-existing personality disorder, so that the stresses to which the employee was subjected were "more than the ordinary incidents of employment" and were "untoward events or unusual occurrences" culminating in his subsequent disability, where a psychiatrist who treated the employee for over 2 years testified that the employee was psychologically disabled and that his work played a significant part in causing it, and testimony from the employee, the employee's wife, and fellow employees established a protracted pattern by the employer to put pressure and stress upon the employee. Borden, Inc. v. Eskridge, 604 So. 2d 1071 (Miss. 1991).

A doctor's inability to pinpoint the exact physical cause of an employee's disability did not alone defeat the employee's claim for compensation, given the beneficent purpose of the Workers' Compensation Act, where there was uncontradicted testimony that the employee was injured while performing his job and that he was totally and permanently disabled. Trest v. B.C. Rogers Processors, Inc., 592 So. 2d 110 (Miss. 1991).

The evidence was sufficient to support a finding by the Workers' Compensation Commission that noise at an employee's work site was a contributing, precipitating, or aggravating factor in the production of Meniere's Syndrome, even though the etiology of Meniere's Syndrome is largely unknown, where there was substantial evidence that exposure to high intensity noise for a period of years at the work site contributed to, aggravated or accelerated the employee's condition, and this evidence was not controverted by any direct medical evidence. Georgia-Pacific Corp. v. Gregory, 589 So. 2d 1250 (Miss. 1991).

The injury arises out of and in the course the employment if the employment aggravates, accelerates, or contributes to the disability as opposed to being the sole or principal cause. Fought v. Stuart C. Irby Co., 523 So. 2d 314 (Miss. 1988).

As general rule employer is not liable for acts of employees going to and returning from work; employer is not liable for act of employee while employee is driving home from work where employee was not being paid hourly wage at time of accident and was not on special mission and was not engaged in furtherance of employer's work even though employee was compensated $6 per day for travel expenses. Smith v. Anderson-Tulley Co., 608 F. Supp. 1143 (S.D. Miss. 1985), aff'd, 846 F.2d 751 (5th Cir. 1988).

Mere fact that employee obtains worker's compensation benefits from accident is insufficient to show that employee was acting within scope of employment at time of accident, thereby subjecting employer to vicarious liability. Smith v. Anderson-Tulley Co., 608 F. Supp. 1143 (S.D. Miss. 1985), aff'd, 846 F.2d 751 (5th Cir. 1988).

When an employee is found dead at a place where his duties required him to be or where he might properly have been in performing his duties during the hours of his work, there is a presumption of causal connection between the injury or death and the employment. Leake County Coop. (A.A.L.) v. Dependents of Barrett, 226 So. 2d 608 (Miss. 1969).

In view of the 1960 amendment imposing on the court the duty of fairly construing the Workmen's Compensation Law according to the law and evidence, reversal was required where the workmen's compensation commission's and circuit court's order denying compensation and medical benefits on the ground that there was no causal connection between the decedent's employment duties and the rupture of the aneurysm causing his death was not supported by substantial evidence. Payton's Dependent v. Armstrong Tire & Rubber Co., 250 Miss. 407, 165 So. 2d 336 (1964).

The test of recovery under Workmen's Compensation Law is not a causal relation between the nature of employment of the injured person and the accident, nor is it necessary that the employee be engaged at the time of the injury in activity of benefit to his employer, and all that is required is that the obligations or conditions of employment create a zone of special danger out of which the injury arose. Brookhaven Steam Laundry v. Watts, 214 Miss. 569, 55 So. 2d 381 (1951).

5. —Status of employee.

An employer's workers' compensation carrier would be liable for the injuries of an employee who was injured while changing a neighboring business' outdoor advertising sign where the employer had a policy of goodwill toward its business neighbors, which included changing the sign for the neighboring business, and the employees were expected to help foster the goodwill policy; since the employee acted in conformity with his employer's dictates, he acted in the course and scope of his employment, and was not a loaned servant to the neighboring business. Quick Change Oil & Lube, Inc. v. Rogers, 663 So. 2d 585 (Miss. 1995).

A defendant who has successfully defended an action for personal injuries resulting from a beating the plaintiff received from defendant's foreman, on the ground that the relationship of employer-employee existed between defendant and plaintiff, cannot thereafter challenge the applicability of the Workmen's Compensation Law to the plaintiff's claim; provided claim for benefits is timely filed within the time extended by Code 1942, § 6998-18(c) beginning with the date of the order dismissing plaintiff's appeal. Seal v. Industrial Elec., Inc., 395 F.2d 214 (5th Cir. 1968).

Liability under Workmen's Compensation Law is not to be adjudged by the common law principles wherein negligence or wrongful act is a controlling factor, but yet the status of the employee as such at the time of the injury may be revealed from decisions which have supplied helpful analogies. Barry v. Sanders Co., 211 Miss. 656, 52 So. 2d 493 (1951).

6. —Out-of-state claims.

An award of workmen's compensation in another state will not bar a claim in Mississippi unless the act under which the award is made provides that it shall be exclusive, where the prior award is credited on the second award. Harrison Co. v. Norton, 244 Miss. 752, 146 So. 2d 327 (1962).

7. —Exclusiveness of remedy.

Given the considerable amount of testimony offered by the employees and the management personnel regarding the employer's refusal to install an appropriate ventilation system on the glue line despite its knowledge of the harmful effects of the neurotoxin contained in the adhesive the intentional tort exception under Miss. Code Ann. § 71-3-9 to the Mississippi Workers' Compensation Act. Miss. Code Ann. §§ 71-3-1 et seq., clearly applied. Franklin Corp. v. Tedford, 18 So. 3d 215 (Miss. 2009).

In a Title VII racial discrimination case in which an employee's claim for negligent infliction of emotional distress was not barred by the three-year limitation period in Miss. Code Ann. § 15-1-49, the claim nonetheless failed since a claim for negligent infliction of emotional distress did not arise from acts of intentional discrimination. Furthermore, any state tort claim grounded in negligence asserted by the employee would be barred by the exclusive remedy provision of the Mississippi Workers' Compensation Law. Fortenberry v. Gulf Coast Cmty. Action Agency, Inc., — F. Supp. 2d —, 2007 U.S. Dist. LEXIS 89831 (S.D. Miss. Dec. 5, 2007).

Company hired to complete specific drilling project for worker's employer was independent contractor and, thus, was not immune from negligence suit under exclusive remedy provision of workers' compensation law as company was sufficiently outside of employer's right to control to assume responsibility for torts of employees. Luther McGill, Inc. v. Bradley, 674 So. 2d 11 (Miss. 1996).

The existence of a contract for indemnity changes the applicability of the exclusivity provision of the Workers' Compensation Act; the enforcement of an indemnity clause which was freely entered into does not impugn the beneficent purposes of the Act because the employee will still be compensated. Heritage Cablevision v. New Albany Elec. Power Sys., 646 So. 2d 1305 (Miss. 1994).

A pipeline operator which contracted with an injured welder's employer for the construction of a pipeline was not immune from tort liability on the ground of the "statutory employer" defense; since the pipeline operator was not a "contractor," and because the employer had secured compensation for the welder's benefit, the Workers' Compensation Act imposed no duty on the pipeline operator and, accordingly, the pipeline operator enjoyed no benefits under the Act. The pipeline operator could not gain tort immunity by assuming compensation obligations which in fact and in law it did not have. Magee v. Transcontinental Gas Pipe Line Corp., 551 So. 2d 182 (Miss. 1989).

Exception to exclusivity of Workers Compensation Act remedy has been held to exist in actions by injured employees against carriers for independent intentional torts, but in those cases alleged tortious conduct occurred independent of and subsequent to workplace injury. Stevens v. FMC Corp., 515 So. 2d 928 (Miss. 1987).

Negligence action by employee of drilling company who was injured when part of drilling rig fell on him, against company which transported rig to drilling site, is precluded by exclusive remedy provision of Mississippi Workers' Compensation Act (§§ 71-3-1 et seq.), since transport company employees were "loaned servants" of drilling company, and since any negligence attributable to transport company employees occurred while they were under supervision of drilling company. Taylor v. Kay Lease Serv., Inc., 761 F.2d 1107 (5th Cir. 1985).

An employee did not have the common law right to sue a fellow employee who allegedly shot him where, on the occasion at issue, both were acting within the scope of and in the furtherance of their duties as employees and were therefore covered by the state workmen's compensation law. Kipnis v. Antoine, 472 F. Supp. 215 (N.D. Miss. 1979).

Where the employer secured the payment of compensation to his employees by qualifying as a self-insurer, the remedy of an employee arises only under the Workmen's Compensation Law, and that statutory remedy being exclusive, no action at law is available to the employee. Taylor v. Crosby Forest Prods. Co., 198 So. 2d 809 (Miss. 1967).

In an action for damages brought by an employee against his employer resulting from a beating perpetrated by his foreman, the employer who alleged that the exclusive remedy was under the workmen's compensation statutes was required to assert as an affirmative defense that the assault upon the employee was one which arose out of the scope and course of his employment. Seal v. Industrial Elec., Inc., 362 F.2d 788 (5th Cir. 1966).

8. —Conflicting evidence.

Where there was conflicting medical evidence regarding a claimant's lumbar condition and her need for lumbar spine injury, an appellate court could not say that the Workers' Compensation Commission's decision to deny benefits was arbitrary and capricious. Washington v. Woodland Vill. Nursing Home, 25 So. 3d 341 (Miss. Ct. App. 2009), writ of certiorari denied by 24 So. 3d 1038, 2010 Miss. LEXIS 2 (Miss. 2010).

A finding that a claimant was not entitled to permanent disability benefits because his disability, which arose from slippage in the spine, was attributable entirely to preexisting spondylolisthesis was not supported by substantial evidence where there was conflicting medical testimony from 2 treating physicians as to the cause of the claimant's permanent disability and neither physician could determine how and when the slippage actually occurred, since close questions of compensability should be resolved in favor of the claimant, and the Workers' Compensation Act should be liberally construed to carry out its remedial purpose. McNeese v. Cooper Tire & Rubber Co., 627 So. 2d 321 (Miss. 1993).

Employee's injury was compensable under the Workers' Compensation Act because the Act was to be construed liberally in favor of claimants and because there was no doubt that a doctor's expert medical opinion supported the Workers' Compensation Commission's decision regarding the employee's injury; while there was a conflict in expert medical opinion, the appellate court was not permitted to resolve conflicts in the evidence based on its mandated presumption that the commission resolved all such conflicts. Union Camp Corp. v. Hall, 955 So. 2d 363 (Miss. Ct. App. 2006), writ of certiorari dismissed by 956 So. 2d 228, 2007 Miss. LEXIS 215 (Miss. 2007).

There was substantial evidence in a physician's testimony to support the Workers' Compensation Commission's determination as to the date a claimant reached maximum medical recovery, and therefore the circuit court erred in finding a different date based on the opinion of another physician. Jordan v. Hercules, Inc., 600 So. 2d 179 (Miss. 1992), but see Dulaney v. National Pizza Co., 733 So. 2d 301 (Miss. Ct. App. 1998).

Where the medical evidence in a heart case is conflicting, the court will affirm the commission whether the award is for or against the claimant. Kersh v. Greenville Sheet Metal Works, 192 So. 2d 266 (Miss. 1966).

9. Relationship with other laws or claims.

For exhaustion of remedies purposes, a final order was not entered until an administrative law judge made a full resolution of a final decision because the parties in a worker's compensation dispute had reserved the issue of temporary and permanent disability for a hearing on the merits. Bullock v. AIU Ins. Co., — So. 2d —, 2008 Miss. LEXIS 221 (Miss. May 8, 2008), opinion withdrawn by, substituted opinion at 995 So. 2d 717, 2008 Miss. LEXIS 595 (Miss. 2008).

Claim decided adversely to asbestosis claimant under the Longshoremen's and Harbor Workers' Compensation Act was res judicata on claim under Mississippi Workers' Compensation, as every factual issue under the Mississippi Act, including the issue of notice to the employer, was litigated and decided adversely to claimant in the Longshoremen's Act proceedings. Ingalls Shipbuilding Div., Litton Sys. v. Parson, 495 So. 2d 461 (Miss. 1986).

Employee's receipt of benefits under Federal Employee's Compensation Act (5 USCS §§ 8101 et seq.) bars action against co-employee since Federal Government and its agencies are not excluded from coverage of provisions of Mississippi Worker's Compensation Act. Wilkins v. Swift, 616 F. Supp. 123 (N.D. Miss. 1985).

In an action by an employee for actual and punitive damages against an employer on the ground that the employee had been discharged when he refused to drop a workman's compensation claim against the employer, the trial court properly sustained the employer's demurrer where there is no provision in the Mississippi Workman's Compensation Law for relief in cases of retaliatory discharge and where such an exception to the common law rule that a contract of employment for an indefinite term may be terminated at the will of either party rests solely within the power of the Legislature and should not be undertaken by the judiciary. Kelly v. Mississippi Valley Gas Co., 397 So. 2d 874, 32 A.L.R.4th 1214 (Miss. 1981).

The filing of a claim under the Mississippi Workmen's Compensation Act tolls the Longshoreman's and Harbor Workers' Compensation Act one-year statute of limitations. Ingalls Shipbuilding Div., Litton Sys. v. Hollinhe, 571 F.2d 272 (5th Cir. 1978).

10. Course of employment.

Employee was not entitled to workers' compensation benefits for injuries arising out of an accident that occurred during her lunch hour while the employee was crossing a public street because the employee was not a traveling employee, the personal comfort doctrine was not applicable, and the threshold doctrine was not applicable. The employee's injuries did not take place during the course of her employment. Bouldin v. Miss. Dep't of Health, 1 So. 3d 890 (Miss. Ct. App. 2008), writ of certiorari denied by 999 So. 2d 1280, 2009 Miss. LEXIS 11 (Miss. 2009).

Mississippi Supreme Court's line of cases, following *Mutual Implement & Hardware Insurance Co. v. Pittman, 59 So. 2d 547* , beginning shortly after enactment of the Mississippi Workers' Compensation Act (MWCA), Miss. Code Ann. § 71-3-1 et seq., in 1942, implicitly relied on a presumption that willful assaults by co-workers were accidental. In Pittman, the court held such attacks to be risks incident to employment of many persons and therefore compensable under the MWCA, and in Pittman and later cases, the Mississippi court focused on whether an assault arose "out of and in the course of employment" rather than focusing on the intent of the assailant. Tanks v. Lockheed Martin Corp, 417 F.3d 456 (5th Cir. 2005).

ATTORNEY GENERAL OPINIONS

Under Miss. Code Ann. § 21-19-25, a municipality may require proof of general liability insurance and workers' compensation coverage when required by Miss. Code Ann. § 71-3-1 et seq., as conditions for the issuance of a municipal building permit. Hedglin, March 23, 2007, A.G. Op. #07-00133, 2007 Miss. AG LEXIS 119.

RESEARCH REFERENCES

ALR. Constitutional or statutory provision referring to "employees" as including public officers. 5 A.L.R.2d 415.

Application for, or award, denial, or acceptance of, compensation under state workmen's compensation act as precluding action under Federal Employers' Liability Act by one engaged in interstate commerce within that act. 6 A.L.R.2d 581.

Homeowners' or personal liability insurance as providing coverage for liability under workmen's compensation laws. 41 A.L.R.3d 1306.

Workmen's compensation provision as precluding employee's action against employer for fraud, false imprisonment, defamation, or the like. 46 A.L.R.3d 1279.

Workmen's compensation: injury sustained while attending employer-sponsored social affair as arising out of and in the course of employment. 47 A.L.R.3d 566.

Mental disorders as compensable under workmen's compensation acts. 97 A.L.R.3d 161.

Workers' compensation immunity as extending to one owning controlling interest in employer corporation. 30 A.L.R.4th 948.

Recovery for discharge from employment in retaliation for filing workers' compensation claim. 32 A.L.R.4th 1221.

Workers' compensation: injuries incurred during labor activity. 61 A.L.R.4th 196.

Workers' compensation: value of home services provided by victim's relative. 65 A.L.R.4th 142.

"Dual Capacity Doctrine" as basis for employee's recovery for medical malpractice from company medical personnel. 73 A.L.R.4th 115.

Validity, construction, and effect of statutory exemptions of proceeds of workers' compensation awards. 48 A.L.R.5th 473.

Workers' compensation as precluding employee's suit against employer for sexual harassment in the workplace. 51 A.L.R.5th 163.

Right to workers' compensation for emotional distress or like injury suffered as result of sudden stimuli involving nonpersonnel action. 83 A.L.R.5th 103.

Am Jur. 82 Am. Jur. 2d, Workers' Compensation § 2.

24 Am. Jur. Proof of Facts 2d 439, "Casual Worker" Under Workers' Compensation Act.

48 Am. Jur. Proof of Facts 2d 1, Worker's Compensation — Employer's Intentional Misconduct.

50 Am. Jur. Proof of Facts 2d 187, Discharge from Employment in Retaliation for Filing Worker's Compensation Claim.

CJS. 99 C.J.S., Workers' Compensation § 11-19.

Law Reviews. 1979 Mississippi Supreme Court Review: Administrative Law. 50 Miss. L. J. 699, December 1979.

1981 Mississippi Supreme Court Review: Administrative Law. 52 Miss. L. J. 377, June 1982.

1984 Mississippi Supreme Court Review: Administrative Law. 55 Miss. L. J. 25, March, 1985.

Practice References. Larson's Workers' Compensation, Desk Edition (Matthew Bender).

Larson's Workers' Compensation Law (Matthew Bender).

Mississippi Workers' Compensation Laws and Rules Annotated, 2010 Edition with CD-Rom (Michie).

§ 71-3-3. Definitions.

Unless the context otherwise requires, the definitions which follow govern the construction and meaning of the terms used in this chapter:

(a) "Person" includes an individual, firm, voluntary association or a corporation.

(b) "Injury" means accidental injury or accidental death arising out of and in the course of employment without regard to fault which results from an untoward event or events, if contributed to or aggravated or accelerated by the employment in a significant manner. Untoward event includes events causing unexpected results. An untoward event or events shall not be presumed to have arisen out of and in the course of employment, except in the case of an employee found dead in the course of employment. This definition includes injuries to artificial members, and also includes an injury caused by the willful act of a third person directed against an employee because of his employment while so employed and working on the job, and disability or death due to exposure to ionizing radiation from any process in employment involving the use of or direct contact with radium or radioactive substances with the use of or direct exposure to roentgen (X-rays) or ionizing radiation. In radiation cases only, the date of disablement shall be treated as the date of the accident. Occupational diseases, or the aggravation thereof, are excluded from the term "injury," provided that, except as otherwise specified, all provisions of this chapter apply equally to occupational diseases as well as injury.

(c) "Death," when mentioned as a basis for the right to compensation, means only death resulting from such an injury.

(d) "Employee" means any person, including a minor whether lawfully or unlawfully employed, in the service of an employer under any contract of hire or apprenticeship, written or oral, express or implied, provided that there shall be excluded therefrom all independent contractors and especially any individual performing service in, and at the time of, the sale of newspapers or magazines to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by the individual at a fixed price, the individual's compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to the individual, whether or not the individual is guaranteed a minimum amount of compensation for such service or is entitled to be credited with the unsold newspapers or magazines returned. A student of an educational institution who, as a part of such educational institution's curriculum, is receiving practical training at any facility, who is under the active and direct supervision of the personnel of the facility and/or an instructor of the educational institution, and who is not receiving wages as a consequence of participation in such practical training shall not be considered an employee of such facility on account of participation in such practical training.

(e) "Employer," except when otherwise expressly stated, includes a person, partnership, association, corporation and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association or corporation.

(f) "Carrier" means any person authorized in accordance with the provisions of this chapter to insure under this chapter and includes self-insurers.

(g) "Self-insurer" is an employer who has been authorized under the provisions of this chapter to carry his own liability on his covered employees without insuring in a stock or mutual carrier.

(h) "Commission" means the Workers' Compensation Commission.

(i) "Disability" means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or other employment, which incapacity and the extent thereof must be supported by medical findings.

(j) "Compensation" means the money allowance payable to an injured worker or his dependents as provided in this chapter, and includes funeral benefits provided therein.

(k) "Wages" includes the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of injury, and also the reasonable value of board, rent, housing, lodging or similar advantage received from the employer and gratuities received in the course of employment from others than the employer. The term "wages" shall not include practical training received by students of an educational institution as a part of such educational institution's curriculum.

(*l*) "Child" shall include a posthumous child, a child legally adopted prior to the injury of the employee, a child in relation to whom the deceased employee stood in the place of a parent for at least one (1) year prior to the time of injury and a stepchild or acknowledged illegitimate child dependent upon the deceased, but does not include married children unless wholly dependent on him. "Grandchild" means a child as above defined of a child as above defined. "Brother" and "sister" include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but does not include married brothers nor married sisters unless wholly dependent on the employee. "Child," "grandchild," "brother" and "sister" include only persons who are under eighteen (18) years of age, and also persons who, though eighteen (18) years of age or over, are wholly dependent upon the deceased employee and incapable of self-support by reason of mental or physical disability, and also a child eighteen (18) years of age or older, until his twenty-third birthday, who is dependent upon the deceased and is pursuing a full-time education.

(m) "Parent" includes stepparents and parents by adoption, parents-in-law or any person who for more than three (3) years prior to the death of the deceased employee stood in the place of a parent to him, or her, if dependent on the injured employee.

(n) The term "surviving spouse" includes the decedent's legal wife or husband, living with him or her or dependent for support upon him or her at the time of death or living apart for justifiable cause or by reason of desertion at such time, provided, however, such separation had not existed for more than three (3) years without an award for separate maintenance or alimony or the filing of a suit for separate maintenance or alimony in the proper court in this state. The term "surviving spouse" shall likewise include one not a legal wife or husband but who had entered into a ceremonial marriage with the decedent at least one (1) year prior to death and who, on the date of the decedent's death, stood in the relationship of a wife or husband, provided there was no living legal spouse who had protected her or his rights for support by affirmative action as hereinabove required. The term "surviving spouse" as contemplated in this chapter shall not apply to any person who has, since his or her separation from decedent, entered into a ceremonial marriage or lived in open adultery with another.

(o) The term "adoption" or "adopted" means legal adoption prior to the time of the injury.

(p) The singular includes the plural and the masculine includes the feminine and neuter.

(q) It is expressly provided, agreed and understood in determining beneficiaries under this section that a surviving spouse suffering a mental or physical handicap and children under the age of eighteen (18) years are presumed to be dependent.

(r) "Independent contractor" means any individual, firm or corporation who contracts to do a piece of work according to his own methods without being subject to the control of his employer except as to the results of the work, and who has the right to employ and direct the outcome of the workers independent of the employer and free from any superior authority in the employer to say how the specified work shall be done or what the laborers shall do as the work progresses, one who undertakes to produce a given result without being in any way controlled as to the methods by which he attains the result.

(s) "Average weekly wage for the state" means an amount determined by the commission as of October 1 of each year based upon wage and employment statistics reported to the commission by the Mississippi Employment Security Commission. Such amount shall be based upon data for the preceding twelve-month period and shall be effective from and after January 1 of the following year.

SOURCES: Codes, 1942, § 6998-02; Laws, 1948, ch. 354, § 2; Laws, 1950, ch. 412, § 1; Laws, 1956, ch. 344; Laws, 1960, ch. 276; Laws, 1962, ch. 473; Laws, 1968, ch. 559, § 2; Laws, 1980, ch. 475, § 1; reenacted, Laws, 1982, ch. 473, § 2; Laws, 1984, ch. 499, § 1; Laws, 1988, ch. 446, § 1; reenacted without change, Laws, 1990, ch. 405, § 2; Laws, 1991, ch. 495, § 1, eff from and after July 1, 1991.

Editor's Note — Laws of 1988, ch. 446, § 6, provides as follows:

"SECTION 6. This act shall take effect and be in force from and after July 1, 1988; provided, however, the increase in benefits allowed under this act shall apply only to claims arising on or after July 1, 1988".

Section 71-5-101 provides that wherever the term "Employment Security Commission" appears in any law it shall mean the "Mississippi Department of Employment Services."

Cross References — Application of chapter where there is no employer-employee relationship as defined in this section, see § 71-3-5.

Application of this section to the definition of "compensation", see § 71-3-157.

JUDICIAL DECISIONS

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31. Going and coming rule.

1. In general.

Substantial evidence supported the finding of the Mississippi Worker's Compensation Commission that the employee, a 61-year-old heavy equipment operator, was permanently and totally disabled due to spinal stenosis and related complications. While the medical evidence was in dispute as to whether he had suffered a total or partial permanent injury, it was a dispute to be resolved by the Commission; the Commission chose to credit a primary treating physician's assessment that the employee could not hold any type job, and that assessment was corroborated by the employee's testimony as well as the employer's statement to the Mississippi Public Employees Retirement System that the employee was totally disabled. Pike County Bd. of Supervisors v. Varnado, 912 So. 2d 477 (Miss. Ct. App. 2005), writ of certiorari denied by 921 So. 2d 344, 2005 Miss. LEXIS 668 (Miss. 2005).

The 1960 amendment to this statute has no bearing upon the right to compensation for an injury sustained prior to its enactment. International Paper Co. v. Wilson, 243 Miss. 659, 139 So. 2d 644 (1962).

2. Compensation.

Where claimant suffered a single injury in 1981 and the injury gradually worsened and progressed to a permanent injury which manifested itself as a total disability in July 1993, the rate of compensation should be based on Johnson's salary and/or wages for July 1993. J.H. Moon & Sons v. Johnson, 753 So. 2d 445 (Miss. 1999).

Both the 10 percent penalty imposed for failure to pay an installment of compensation payable without an award within 14 days after it becomes due, and the 20 percent penalty for failure to pay an installment payable under the terms of an award within 14 days after it becomes due, could be imposed upon the same installments of compensation, so that when an employer failed to pay a judgment within 14 days after the award became final, the 20 percent penalty applied to the judgment, which consisted of vested installments together with interest and the 10 percent penalty, as well as to installments due after the award. Delchamps, Inc. v. Baygents, 578 So. 2d 620 (Miss. 1991).

Compensation may be allowed for disabling pain in the absence of positive medical testimony as to any physical cause whatever. When the patient complains of pain, the doctor usually takes the fact of pain for granted and the absence of physical findings to account for the pain will not necessarily bar compensation. In such cases, evidence of an accident followed by disabling pain and the absence of evidence as to the cause of the pain from objective medical findings may be sufficient as a basis for compensation, in the absence of circumstances tending to show malingering or indicating that the claimant's testimony as to pain is inherently improbable, incredible, unreasonable or untrustworthy. However, there is a great potential for abuse in claims which are based predominantly upon pain reported by the patient, particularly in circumstances where the patient's testimony or statement to the physician is the sole evidence of its continued presence. In these cases, it would be prudent to obtain additional medical evidence to either support or dispute the claim. Morris v. Lansdell's Frame Co., 547 So. 2d 782 (Miss. 1989).

In work-connected injury cases where the evidence establishes (a) successive injuries experienced by the employee where following the first injury the employee engages in full-time employment for a substantial period of time prior to the second injury; or (b) a preexisting (symptomatic or asymptomatic) condition which causes the employee to experience no preinjury occupational disability, apportionment may not be ordered. On the other hand, in cases where (a) there is evidence of a medically cognizable, identifiable, symptomatic condition which antedated the injury; and (b) the employee experienced some absence of normal (for him or her) wage earning capacity, then apportionment must be ordered. Stuart's, Inc. v. Brown, 543 So. 2d 649 (Miss. 1989).

The onset of an employee's essential tremors arose out of and in the course of employment where a cold tablet purchased from her employer exacerbated her pre-existing congenital condition and contributed to the onset of her essential tremor; the employer gained the benefits of lessening absenteeism due to illness by distributing the medication and, by memoranda, the employer suggested to its employees that they avail themselves of the medication provided at the employer's first-aid station. Quitman Knitting Mill v. Smith, 540 So. 2d 623 (Miss. 1989).

Compensation, as defined in subsection (10) of Code 1942, § 6998-02 [now subsection (j) of Code 1972, § 73-3-3 [Repealed]], includes money allowances paid to an injured worker or his dependents, and funeral benefits provided in the act, but does not include legal fees incurred by the insurer. Kidwell v. Gulf, M. & O.R. Co., 251 Miss. 152, 168 So. 2d 735 (1964).

Payment of medical expenses is a part of and is equivalent to the payment of compensation. Graeber Bros. v. Taylor, 237 Miss. 691, 115 So. 2d 735 (1959), error overruled 237 Miss. 691, 117 So. 2d 469.

3. Death.

Mississippi Workers' Compensation Commission improperly applied the relevant law to the question of whether the death of a truck driver, who was shot and killed by a bar patron after both left a bar where the truck driver had been drinking for 11 hours, was "because of" his employment under Miss. Code Ann. § 71-3-3(b); his death was not a result of his employment and it was not compensable. Total Transp., Inc. v. Shores, 968 So. 2d 400 (Miss. 2007).

A circuit court judgment affirming the Workers' Compensation Commission's denial of benefits to a deceased employee's children was not supported by substantial evidence and would be reversed where the onset of the employee's death occurred at her place of employment and the employer failed to rebut the presumption that the employee's work activities did not cause or contribute to the condition from which she died; the unrebutted "found dead" legal presumption prevailed, satisfying the causal connection between the employee's work duties and the condition which resulted in her death. Nettles v. Gulf City

Fisheries, Inc., 629 So. 2d 554, 47 A.L.R.5th 977 (Miss. 1993).

The Workers' Compensation Commission's apportionment of an award of death benefits by 2/3 on the basis of pre-existing health conditions was supported by substantial evidence where the worker, who died of a heart attack arising out of and in the course of his employment, had smoked 3 packs of cigarettes daily since his teenage years and consumed approximately "½ bottle of alcohol" daily for an unspecified number of years, and his family had a history of heart-related problems. Hardin's Bakeries v. Dependent of Harrell, 566 So. 2d 1261 (Miss. 1990).

Since a claim for disability is separate and distinct from a claim for death benefits, the 1960 amendment to subsection (9) of Code 1942, § 6998-02 [now subsection (i) of Code 1972, § 71-3-3], requiring that incapacity and the extent thereof be supported by medical findings, did not eliminate the presumption of causal connection between the employment and death occurring while the employee is engaged in the duties of his employment, particularly since the 1960 amendment did not affect subsection (3) of Code 1942, § 6998-02 [now subsection (c) of Code 1972, § 71-3-3]. L.B. Priester & Son v. Bynum's Dependents, 244 Miss. 196, 142 So. 2d 30 (1962), overruled on other grounds, Wilson v. Mississippi Emp. Sec. Comm'n, 643 So. 2d 538 (Miss. 1994).

4. Dependents, generally.

The term "dependent" must be liberally interpreted, and includes those partially dependent as well as those wholly dependent, and one is dependent if he relies upon the employee, in whole or in part, for his support. Mid-State Paving Co. v. Farthing, 233 Miss. 333, 101 So. 2d 850 (1958).

In order to be a dependent, the claimant must show that he had reasonable grounds to anticipate future support from the deceased employee. Mid-State Paving Co. v. Farthing, 233 Miss. 333, 101 So. 2d 850 (1958).

The provision of the Workmen's Compensation Law to the effect that questions of dependency shall be determined at the time of the injury has reference to the dependency which generates the original right to an award, and does not control the question of determination of a right to continue receiving an award. Franklin v. Jackson, 231 Miss. 497, 95 So. 2d 794 (1957).

The word "dependent" as used in the Workmen's Compensation Law means a person who is dependent upon the employee, in whole or in part, for his support and relies on the same. Deemer Lumber Co. v. Hamilton, 211 Miss. 673, 52 So. 2d 634 (1951).

The use of the words "wholly dependent" and "dependent" shows the legislative intent to make "dependent" mean something different from "wholly dependent." Deemer Lumber Co. v. Hamilton, 211 Miss. 673, 52 So. 2d 634 (1951).

5. —Brothers and sisters.

Evidence that a deceased workman regularly provided groceries to his family and on several occasions clothing, mostly for his minor brothers, and that each month he did three or four days of extra work, paying all the money for this to the father of the deceased, that the father of the deceased was unable to work and received $58 per month in welfare payments, supported the commission's finding that the minor brothers had been partially dependent upon the deceased for their support and were entitled to workmen's compensation benefits after the deceased was killed in the course of his employment. United States Fid. & Guar. Co. v. Fortner, 234 So. 2d 636 (Miss. 1970).

In the absence of proof that the deceased employee's brother, who was over 18 years of age at the time of employee's death, was wholly dependent upon employee and was incapable of self-support by reason of mental or physical disability, the award to him of compensation was erroneous. W.R. Fairchild Constr. Co. v. West, 202 So. 2d 643 (Miss. 1967).

Evidence that deceased employee had furnished money and supplies for the support of his two minor brothers and of his father who was in poor health and had not been gainfully employed during the two years next prior to his death sustained the commission's finding that the father and the minor brothers were totally dependent upon the deceased at the time of his death.

Truck Trailer Sales & Serv. Co. v. Moore, 244 Miss. 317, 141 So. 2d 541 (1962).

A brother who by reason of low intelligence and the loss of an arm is incapable of holding a job, and who received from the deceased employee regular monthly sums without which he would have been destitute, may properly be found to have been entirely dependent upon him, though he earned a little money by sweeping a church, and received occasional small gifts of money from another brother, who also paid a hospital bill. Ross v. Ross, 240 Miss. 84, 126 So. 2d 512 (1961).

6. —Children, generally.

Workers' Compensation Commission's decision that the child was not a dependent of the decedent and thus not entitled to an award of death benefits was supported by substantial evidence; because of the child's age (26-years old) and marital status (married), an award of death benefits to her would not be proper unless she was wholly dependent on the decedent, and given the myriad income sources available to and used by the child, the appellate court could hardly view the receipt of such income as sporadic or insubstantial. Descendants of Gilmer v. Nolen Sistrunk Trucking, Inc., 892 So. 2d 825 (Miss. Ct. App. 2004), cert. denied, 893 So. 2d 1061 (Miss. 2005).

In interpreting meaning of word "children" under Federal Employers Liability Act, provisions of Mississippi Workers' Compensation Act do not apply; even if Workers' Compensation Act provisions did apply, it would not help child where there was no proof that she was dependent on deceased at time of his death, or that claim on decedent for support had ever been made, because section specifically states that acknowledged illegitimate child, dependent on decedent, may recover. Ivy v. Illinois Cent. Gulf R. Co., 510 So. 2d 520 (Miss. 1987).

Grandchild to whom deceased stood in place of parent for at least one year prior to injury elevated to child status, where uncontroverted evidence showed that decedent had stood in place of granddaughter's father all of her life, and she called him "Daddy." United States Rubber Reclaiming Co. v. Dependents of Stampley, 508 So. 2d 673 (Miss. 1987).

Under Miss Code 1972 §§ 71-3-3 & 71-3-25, which define a "child" and "grandchild" and prescribe different workmen's compensation benefits for each, two minor natural grandchildren, with whom the Commission found that decedent stood in loco parentis for at least one year prior to the time of his injury and death, would be elevated to the status of children for workmen's compensation benefit purposes. Longleaf Forest Prods., Inc. v. Hopkins, 349 So. 2d 523 (Miss. 1977).

A child who from the time of her adoption never resided with her natural father but remained in the care, custody, and control, and under the supervision of the mother and adoptive father, cannot be considered as a dependent of the natural father for purposes of the Workmen's Compensation Law. W.R. Fairchild Constr. Co. v. Owens, 224 So. 2d 571 (Miss. 1969).

Dependency at time of parent's injury does not entitle minor daughter to death benefit where she married prior to the parent's death. Futorian-Stratford Furn. Co. v. Oswalt's Dependents, 249 Miss. 35, 162 So. 2d 645 (1964).

A married daughter, living apart from her husband and with deceased at the time of his death, who was over the age of 18 years, was not wholly dependent upon the deceased, and not incapable of self support by reasons of mental or physical disability, was precluded from the allowance of any benefits for the death of her father. Thrash v. Jackson Auto Sales, Inc., 232 Miss. 845, 100 So. 2d 574 (1958).

Since one of the primary purposes of the Workmen's Compensation Law is to relieve society of the burden of supporting helpless children in orphanages and public almshouses, it would be inconsistent to allow children over the ages of 18 years, who are physically and mentally able to support themselves, to receive compensation and to plead the award to the detriment of younger children who, because of age, are unable to support themselves. Franklin v. Jackson, 231 Miss. 497, 95 So. 2d 794 (1957).

Even though a child qualifies as a dependent as of the time of injury because he is then under 18 years of age, he ceases to be a child within the meaning of the

Workmen's Compensation Law when he reaches the age of 18 years unless he is incapable of self-support by reason of mental or physical disability. Franklin v. Jackson, 231 Miss. 497, 95 So. 2d 794 (1957).

Where it appeared that the 34-year-old feeble-minded daughter of a deceased employee was not wholly dependent upon her father for support at the time of and shortly prior to his death and had been supported primarily during most of her life by someone else, the daughter's claim was not compensable. Aultman v. Crosby Chems., Inc., 222 Miss. 98, 75 So. 2d 458 (1954).

Where a daughter of deceased employee, who was under 18 at the time of his death, married a month after his death and was supported by her husband afterwards, the compensation to the daughter would not be terminated as of the date of her marriage. Anderson-Tully Co. v. Wilson, 221 Miss. 656, 74 So. 2d 735 (1954).

7. — —Adopted children.

A child who from the time of her adoption never resided with her natural father but remained in the care, custody, and control, and under the supervision of the mother and adoptive father, cannot be considered as a dependent of the natural father for purposes of the Workmen's Compensation Law. W.R. Fairchild Constr. Co. v. Owens, 224 So. 2d 571 (Miss. 1969).

8. — —Grandchildren.

Grant of summary judgment in favor of the grandparents was proper where they were not vicariously liable and did not negligently supervise their grandchild when he was driving the grandfather's vehicle with a learner's permit and struck another driver because the mission of the trip was not for the mutual benefit of both the occupants; therefore, it could not be held that the grandparents had a master/servant relationship with their grandchild created by a joint venture. Warren v. Glascoe, 852 So. 2d 634 (Miss. Ct. App. 2003), aff'd, 880 So. 2d 1034 (Miss. 2004).

Grandchild to whom deceased stood in place of parent for at least one year prior to injury elevated to child status, where uncontroverted evidence showed that decedent had stood in place of granddaughter's father all of her life, and she called him "Daddy." United States Rubber Reclaiming Co. v. Dependents of Stampley, 508 So. 2d 673 (Miss. 1987).

Under Miss Code 1972 §§ 71-3-3 & 71-3-25, which define a "child" and "grandchild" and prescribe different workmen's compensation benefits for each, two minor natural grandchildren, with whom the Commission found that decedent stood in loco parentis for at least one year prior to the time of his injury and death, would be elevated to the status of children for workmen's compensation benefit purposes. Longleaf Forest Prods., Inc. v. Hopkins, 349 So. 2d 523 (Miss. 1977).

9. — —Illegitimate children.

In interpreting meaning of word "children" under Federal Employers Liability Act, provisions of Mississippi Workers' Compensation Act do not apply; even if Workers' Compensation Act provisions did apply, it would not help child where there was no proof that she was dependent on deceased at time of his death, or that claim on decedent for support had ever been made, because section specifically states that acknowledged illegitimate child, dependent on decedent, may recover. Ivy v. Illinois Cent. Gulf R. Co., 510 So. 2d 520 (Miss. 1987).

One of the primary purposes of the Workmen's Compensation Law is to relieve society of the burden of supporting in orphanages or public almshouses helpless children, who have been left without means of support because of the death of wage earners who have lost their lives in industrial accidents, and the benefits of the law are not limited to children begotten in lawful wedlock. Stanley v. McLendon, 220 Miss. 192, 70 So. 2d 323 (1954).

An illegitimate child of deceased employee is entitled to benefits if dependent upon the deceased. Fernwood Indus., Inc. v. Mitchell, 219 Miss. 331, 68 So. 2d 830 (1953).

Where the evidence showed the contributions by deceased worker to the support and maintenance of his illegitimate son under eighteen years of age during the last four years consisted of three pairs of pants, a shirt, and now and then a nickel, dime or quarter, and the claimant was living in the home of his mother and stepfather and they were furnishing him all clothing, sustenance, and school expense, their illegitimate son was not a dependent of the employee and was not entitled to the death benefits. Fernwood Indus., Inc. v. Mitchell, 219 Miss. 331, 68 So. 2d 830 (1953).

The statutory presumption that children are presumed to be dependent does not apply to illegitimate children and the fact of dependency must be shown. Fernwood Indus., Inc. v. Mitchell, 219 Miss. 331, 68 So. 2d 830 (1953).

A deceased employee's alleged illegitimate child was not entitled to death benefits unless she could show by competent evidence that she was an acknowledged illegitimate child dependent upon the deceased. Stanford v. Stanford, 219 Miss. 236, 68 So. 2d 275 (1953).

Where deceased continued to support his two acknowledged, illegitimate children after their mother had married another, the children were entitled to be recognized as dependent children of deceased. Watkins v. Taylor, 216 Miss. 822, 63 So. 2d 225 (1953), motion granted, 216 Miss. 822, 65 So. 2d 461 (1953).

Workmen's Compensation Law which allows payments of compensation to acknowledged illegitimate child dependent upon deceased's labor, and to bigamous wife upon death of the putative husband is not repugnant to the Constitution nor any public policy in regard to bigamy. Pathfinder Coach Div. of Superior Coach Corp. v. Cottrell, 216 Miss. 358, 62 So. 2d 383 (1953).

10. — —Step children.

Children of a mistress, if supported by a workman, are dependents entitled to compensation for his death, although their parents are living. Boen's Dependents v. Foster, 241 Miss. 520, 130 So. 2d 877 (1961).

A finding that the second wife of a deceased employee, as well as her children by a former marriage, were entitled to share in the death benefits resulting from the employee's death, was affirmed, where there was evidence showing that the stepchildren were dependent upon the decedent for support, and that the wife and children were not living apart from the decedent without justifiable excuse. Bolton v. Easterling, 232 Miss. 236, 98 So. 2d 658 (1957).

Where a mother of an illegitimate child married someone other than the father, and the child was supported by the husband, the child was the husband's stepchild. Pigford Bros. Constr. Co. v. Evans, 225 Miss. 411, 83 So. 2d 622 (1955).

11. —Parents.

Mother of decedent was not entitled to bring wrongful death action where decedent was killed when he was struck by car while working on highway project; contention that wrongful death statute controlled over Workers' Compensation provision which provided that it would be exclusive remedy was rejected; argument that because mother was not dependent on decedent, exclusive remedy provision in death benefit cases did not apply was also rejected, because act intended to provide exclusive remedy growing out of employer-employee relationship, and different result would subject employer in many instances to double liability. Estate of Morris v. W.E. Blain & Sons, 511 So. 2d 945 (Miss. 1987).

A mother who was at least partially dependent upon her son was entitled to benefits under the Workmen's Compensation Law, when the son was killed in the course of his employment where the record showed that, although the son's support had been irregular, he had contributed to his mother's support since he was 13 years of age, omitting the time he was incarcerated for manslaughter. Magnolia Constr. Co. v. Dependent of Stovall, 250 Miss. 761, 168 So. 2d 297 (1964).

Evidence that deceased employee had furnished money and supplies for the support of his two minor brothers and of his father who was in poor health and had not been gainfully employed during the two years next prior to his death sustained the commission's finding that the father and the minor brothers were totally dependent upon the deceased at the time of his death. Truck Trailer Sales & Serv. Co. v. Moore, 244 Miss. 317, 141 So. 2d 541 (1962).

Evidence that deceased employee had made cash contributions to his parents on numerous, although irregular, occasions, had done the heavy manual work on their farm, and other than at times when he was working on construction projects, he had lived with his parents, except during a brief interval of an unsuccessful marriage, sustained the finding that the parents were partially dependent upon the employee, had reasonable grounds to anticipate continuing future support from him, and, thus, were dependents. Mid-State Paving Co. v. Farthing, 233 Miss. 333, 101 So. 2d 850 (1958).

12. —Surviving spouse, generally.

Husband is dependent of wife, for purposes of worker's compensation, where at time of wife's death, husband is totally disabled and his own worker's compensation claim for permanent disability benefits is subject to motion to controvert by employer. Ingalls Shipbuilding Div., Litton Sys. v. Dependents of Sloane, 480 So. 2d 1117 (Miss. 1985).

A widow, to qualify as a dependent for the purposes of the Workmen's Compensation Law must have entered into a ceremonial marriage pursuant to a license, in compliance with the provisions of Code 1942, §§ 465 and 465.5. South Cent. Heating & Plumbing Co. v. Dependents of Campbell, 219 So. 2d 140 (Miss. 1969).

The presumption of dependency of a widow, created by this provision, is conclusive. Watson v. National Burial Ass'n, 234 Miss. 749, 107 So. 2d 739 (1958).

Although sexual relationship in a marriage is usual, it is not essential to establish the requirement under the Workmen's Compensation Law that the husband and wife are living with each other, where other conditions and circumstances of marriage relationship exists. Stewart Co. v. Christmas, 224 Miss. 29, 79 So. 2d 526 (1955).

Words "surviving wife" mean a widow who is entitled to compensation under the provisions of law. Watkins v. Taylor, 216 Miss. 822, 63 So. 2d 225 (1953), motion granted, 216 Miss. 822, 65 So. 2d 461 (1953).

The Constitution does not announce a paramount public policy prohibiting legislation which would allow a bigamous wife to recover benefits under the Workmen's Compensation Law. Pathfinder Coach Div. of Superior Coach Corp. v. Cottrell, 216 Miss. 358, 62 So. 2d 383 (1953).

Under subsection (18) of Code 1942, § 6998-02 [now subsection (n) of Code 1972, § 71-3-3], a widow is presumed to be dependent, but this is a rebuttable presumption. Thomas v. Contractor's Material Co., 213 Miss. 672, 57 So. 2d 494 (1952).

13. — —Common-law spouse.

Where the deceased employee has been married in a ceremonial marriage to a woman who admitted at the time of her marriage that she had two undivorced husbands from two prior ceremonial marriages but there was no evidence that these prior marriages had been legal or were dissolved before marriage to the deceased employee, such woman was the surviving common-law wife of the employee for the purpose of determining to whom the workmen's compensation award should be made. Anderson-Tully Co. v. Wilson, 221 Miss. 656, 74 So. 2d 735 (1954).

14. — —Separation.

A woman separated but not divorced from her husband who was awarded separate maintenance by a court of a sister state within three years of the separation was a widow within the meaning of this section even though she had not filed a separate maintenance suit in this state. Walton v. McLendon, 342 So. 2d 732 (Miss. 1977).

A widow is not entitled to compensation for her husband's death where, without justification, she has lived apart from him for more than three years, and in open adultery. Jackson Oil Prods. Co. v. Curtis, 241 Miss. 188, 129 So. 2d 403 (1961).

A woman who, for justifiable cause, has separated from her husband is, where the separation has been for less than three years, entitled to compensation for his death, although she has been supporting herself without his aid. Watson v. National Burial Ass'n, 234 Miss. 749, 107 So. 2d 739 (1958).

A woman deserted by her husband, who contracted a ceremonial marriage with another without herself having obtained, or knowing whether her husband had obtained, a divorce, and lived with such other as his wife, will be regarded as his widow within the Workmen's Compensation Law, where there is no showing as to whether her lawful husband was living or undivorced. Jackson v. Bailey, 234 Miss. 697, 107 So. 2d 593 (1958).

Where one of two alleged widows claiming compensation had been ceremoniously married to the employee while she had an undivorced husband, and then separated from him, and thereafter the employee lived with another woman as husband and wife, the former was not a widow within the provision of the statute even though after the separation the husband brought her gifts. United Timber & Lumber Co. v. Alleged Dependents of Hill, 226 Miss. 540, 84 So. 2d 921 (1956).

The principal test of whether husband and wife are living with each other is whether they are living as husband and wife with voluntary recognition of the relationship, and with no design or agreement to live apart free from the reciprocal marital rights and duties. Stewart Co. v. Christmas, 224 Miss. 29, 79 So. 2d 526 (1955).

Where an employee, who was killed while working in the course of his employment, worked at public work and lived at different places, visited his family from one to three times a week, and contributed the major portion of his earnings to their support, and his wife's health was bad, the deceased and the widow were living together within the meaning of Workmen's Compensation Law and the widow was entitled to compensation. Stewart Co. v. Christmas, 224 Miss. 29, 79 So. 2d 526 (1955).

The term widow or widower as contemplated in the Workmen's Compensation Law shall not apply to any person who has since his or her separation from decedent entered into a ceremonial marriage or lived in open adultery with another. Watkins v. Taylor, 216 Miss. 822, 63 So. 2d 225 (1953), motion granted, 216 Miss. 822, 65 So. 2d 461 (1953).

Where a wife left her husband and lived with another man, she was estopped from recovery of workmen's compensation for the death of her husband. Thomas v. Contractor's Material Co., 213 Miss. 672, 57 So. 2d 494 (1952).

It is not sufficient for the widow to show that she left the deceased for justifiable cause. Thomas v. Contractor's Material Co., 213 Miss. 672, 57 So. 2d 494 (1952).

Where a man and woman lived together for three years and a child was born, but they did not hold themselves out as husband and wife, and both later separated and each of them contracted a ceremonial marriage, this was insufficient evidence to substantiate a common-law marriage and the man's subsequent ceremonial marriage was valid, and the widow was entitled to compensation upon the death of her husband. United States Fid. & Guar. Co. v. Smith, 211 Miss. 573, 52 So. 2d 351 (1951).

15. — —Divorce.

A reconciliation during the pendency of a divorce suit entitles the wife to claim compensation as widow. Boen's Dependents v. Foster, 241 Miss. 520, 130 So. 2d 877 (1961).

16. Dependency, presumption of.

The conclusive presumption that the natural child of a deceased employee was his dependent was terminated as of the date of the child's adoption, and from that date she was and is conclusively presumed to be a dependent of her adopted father for workmen's compensation purposes. W.R. Fairchild Constr. Co. v. Owens, 224 So. 2d 571 (Miss. 1969).

The presumption of dependency of a widow, created by this provision, is conclusive. Watson v. National Burial Ass'n, 234 Miss. 749, 107 So. 2d 739 (1958).

The provision that children under 18 are presumed to be dependent creates a rule of substantive law to the effect that a child under 18 years of age is conclusively presumed to be dependent. Anderson-Tully Co. v. Wilson, 221 Miss. 656, 74 So. 2d 735 (1954).

The statutory presumption that children are presumed to be dependent does not apply to illegitimate children and the fact of dependency must be shown. Fernwood Indus., Inc. v. Mitchell, 219 Miss. 331, 68 So. 2d 830 (1953).

Under subsection (18) of Code 1942, § 6998-02 [now subsection (n) of Code 1972, § 71-3-3], a widow is presumed to be dependent, but this is a rebuttable presumption. Thomas v. Contractor's Material Co., 213 Miss. 672, 57 So. 2d 494 (1952).

17. Disability.

In a workers' compensation action, a finding that the employee sustained a 15 percent loss of use to each of his knees was proper under Miss. Code Ann. ' 71-3-3(i) because, although he had some limitations, there was no conclusion that he was completely unable to work. There was no merit to the employee's claim that the administrative law judge erred when she declined to find that the employee suffered a total occupational loss of use of his legs. Smith v. Masonite Corp., 48 So. 3d 565 (Miss. Ct. App. 2010), writ of certiorari denied en banc by 49 So. 3d 1139, 2010 Miss. LEXIS 626 (Miss. 2010).

Modification of the disability award in a workers' compensation action down to a 30 percent permanent partial disability award was appropriate under Miss. Code Ann. §§ 71-3-3(i) and 71-3-17(a) because the employee failed to prove that he suffered permanent total disability. The employee was released by two doctors without work restrictions and he failed to reapply or make an otherwise diligent effort to return to work with the employer after reaching maximum medical improvement; further, one doctor was unable to explain the employee's subjective complaints about pain in his leg and another doctor was likewise also unable to explain the employee's complaints of decreased sensation in the leg. Smith v. Johnston Tombigbee Furniture Mfg. Co., 43 So. 3d 1159 (Miss. Ct. App. 2010), writ of certiorari denied by 49 So. 3d 106, 2010 Miss. LEXIS 470 (Miss. 2010).

Modification of the disability award in a workers' compensation action down to a 30 percent permanent partial disability award was appropriate under Miss. Code Ann. §§ 71-3-3(i) and 71-3-17(a) because the employee failed to prove that he suffered permanent total disability. The employee was released by two doctors without work restrictions and he failed to reapply or make an otherwise diligent effort to return to work with the employer after reaching maximum medical improvement; further, one doctor was unable to explain the employee's subjective complaints about pain in his leg and another doctor was likewise also unable to explain the employee's complaints of decreased sensation in the leg. Smith v. Johnston Tombigbee Furniture Mfg. Co., 43 So. 3d 1159 (Miss. Ct. App. 2010), writ of certiorari denied by 49 So. 3d 106, 2010 Miss. LEXIS 470 (Miss. 2010).

In a workers' compensation action, simply because the employee did not return to the employer to seek employment was of no consequence. The record reflected that the employee looked for employment elsewhere, which was in accordance with Miss. Code Ann. § 71-3-3(i). Johnson v. Sanderson Farms, Inc., 17 So. 3d 1119 (Miss. Ct. App. 2009).

Workers' compensation benefits claimant was entitled to permanent total disability benefits under Miss. Code Ann. § 71-3-17(a) where she provided documentation that she had made 194 attempts to find another job, and there was no substantial evidence showing that the claimant's efforts were a sham, less than reasonable, or without proper diligence. Lott v. Hudspeth Ctr., 26 So. 3d 1057 (Miss. Ct. App. 2008), reversed by 26 So. 3d 1044, 2010 Miss. LEXIS 11 (Miss. 2010).

Award of permanent total disability to the claimant was appropriate under Miss. Code Ann. § 71-3-3(I) because he met his burden of proof showing that he had a work-related disability. The medical proof and the claimant's testimony were to the effect that as a result of the injury, he suffered severe permanent physical limitations. Ameristar Casino-Vicksburg v. Rawls, 2 So. 3d 675 (Miss. Ct. App. 2008).

Finding that the employee sustained a 70 percent loss of wage-earning as a result of a work-related injury while employed with the employer was appropriate pursuant to Miss. Code Ann. § 71-3-3(i) because the law did not require that the employee move to another part of the state or another state with regard to the duty to make reasonable effort to secure other comparable gainful employment. Therefore, the employee was not required to move to Florida in order to satisfy her duty to seek other employment. Goolsby Trucking Co. v. Alexander, 982 So. 2d 1013 (Miss. Ct. App. 2008).

Mississippi Workers' Compensation Commission correctly determined that an employee had not established a prima facie case under Jordan because the employee reported back to work before she reached maximum medical improvement; thus, even assuming the evidence otherwise supported the application of the Jordan presumption, the employee did not establish a prima facie case of total disability under Jordan. Lifestyle Furnishings v. Tollison, 985 So. 2d 352 (Miss. Ct. App. 2008).

Mississippi Workers' Compensation Commission found that although a claimant could not resume work in her pre-injury employment, she had not made sufficient efforts to obtain other employment to meet the definition of "disability" under Miss. Code Ann. § 71-3-3(I) because her search for other employment was not reasonable, and the Commission only awarded permanent partial disability benefits under Miss. Code Ann. § 71-3-17(c). The Commission's decision was supported by substantial evidence, it was the Commission's to make, and in reversing the Commission's decision and awarding the claimant permanent, total disability under Miss. Code Ann. § 71-3-17(a), the circuit court improperly invaded the Commission's decision-making authority. Lifestyle Furnishings v. Tollison, 985 So. 2d 352 (Miss. Ct. App. 2008).

There was substantial evidence on which the workers' compensation commission could have found that a claimant did not prove that she was disabled where, inter alia, while it did appear that she attempted, on one occasion, to contact her employer and return to her job in July of 1996, she did not assert that she sought any other employment, rather, she simply argued that she was unable to even attempt to go to work. That argument was contrary to her arguments before the unemployment appeals referee, wherein she claimed to have been able to return to light duty work and it was also contrary to the testimony of all three testifying physicians. Digrazia v. Park Place Entm't, 914 So. 2d 1232 (Miss. Ct. App. 2005).

In an action in which an employer appealed from a judgment of the Harrison County Circuit Court, which affirmed the Mississippi Workers' Compensation Commission decision that the employee's worker's compensation claim was compensable, the judgment was affirmed where: (1) substantial evidence existed from which the Commission could have determined that the employee's employment caused his injury; (2) the list provided by the employee in mid-January of 2004 enumerated six attempts to locate employment between September 3, 2003, and October 6, 2003; and (3) the Commission was not clearly erroneous for finding that the employee's job search was diligent, despite his refusal to work with the vocational expert. Imperial Palace Casino v. Wilson, 960 So. 2d 549 (Miss. Ct. App. 2006), writ of certiorari denied en banc, En banc by 959 So. 2d 1051, 2007 Miss. LEXIS 402 (Miss. 2007).

As medical testimony established that an employee suffered from bilateral carpal tunnel syndrome and a vocational expert testified about the difficulty the employee would have in finding other work, the employee met his burden of proving a disability under Miss. Code Ann. § 71-3-3. Binswanger Mirror v. Wright, 947 So. 2d 346 (Miss. Ct. App. 2006).

Finding that the employee in a workers' compensation case was permanently and totally disabled was appropriate because he had met his burden set forth in Miss. Code Ann. § 71-3-3(I). He had attempted to perform lighter-duty work after his surgery but could not perform any of the tasks assigned to him. Mueller Copper Tube Co. v. Upton, 930 So. 2d 428 (Miss. Ct. App. 2005), writ of certiorari denied by 933 So. 2d 303, 2006 Miss. LEXIS 495 (Miss. 2006).

Workers' Compensation Commission erred in applying the no loss of wage presumption because the claimant's disability or inability to earn his pre-injury wages as provided in Miss. Code Ann. § 71-3-3 (i) had not fully manifested itself when he returned to work after surgery. Undisputed testimony and medical evidence showed that the claimant was permanently totally disabled and that the Commission erred in disregarding the evidence that showed the claimant's condition worsened after the surgery and left him unable to work at his pre-injury job and pay as a carpenter. Univ. of Miss. Med. Ctr. v. Smith, 909 So. 2d 1209 (Miss. Ct. App. 2005).

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Trial court properly denied an employee's claim for permanent disability benefits in a case where the employee's post-injury unemployment arose due to her unwillingness to carry out tasks she was physically capable of performing, rather than from a permanent diminished physical ability to perform in the workplace arising out of her work-related neck injury. Wagner v. Hancock Med. Ctr., 825 So. 2d 703 (Miss. Ct. App. 2002).

The Worker's Compensation Commission erred as a matter of law when it refused to consider the extent of the claimant's efforts to find other suitable employment for which he might be suited in his post-injury condition when assessing the extent of his permanent partial disability. Entergy Miss., Inc. v. Robinson, 777 So. 2d 53 (Miss. Ct. App. 2000).

The claimant did not sustain a disability within the meaning of the statute and, therefore, was not entitled to permanent disability benefits, notwithstanding that she sustained an 8-10 percent permanent impairment, where her post-injury income exceeded her pre-injury income. Winters v. Choctaw Maid Farms, Inc., 764 So. 2d 471 (Miss. Ct. App. 2000).

The fact that the claimant voluntarily retired from her position together with the fact that she did not try to find another job for seven months after leaving her employer supported the determination that she did not make reasonable efforts to obtain gainful employment and, therefore, was not disabled. Ford v. Emhart, Inc., 755 So. 2d 1263 (Miss. Ct. App. 2000).

Workers' compensation claimant who has reached maximum medical recovery can establish prima facie showing of total disability if claimant reports back to work, and employer refuses to reinstate or rehire claimant, and burden then shifts to employer to prove that claimant suffered only partial disability or that claimant suffered no loss of wage earning capacity. Hale v. Ruleville Health Care Ctr., 687 So. 2d 1221 (Miss. 1997).

Workers' compensation claimant made out prima facie case for permanent total disability by showing that, after reaching maximum medical improvement, she sought but was unable to find employment. Hale v. Ruleville Health Care Ctr., 687 So. 2d 1221 (Miss. 1997).

Employer rebutted workers' compensation claimant's prima facie case for permanent total disability by showing that employee's efforts at securing employment did not involve reasonable diligence. Hale v. Ruleville Health Care Ctr., 687 So. 2d 1221 (Miss. 1997).

A finding by the Workers' Compensation Commission that an injured manual laborer who was restricted by his doctor to lifting less than 40 pounds suffered only minimal industrial incapacity was not supported by substantial evidence where the decision was based largely on an alleged policy of the employer requiring workers to seek assistance when lifting more than 40 pounds, but the record contained no evidence of such a policy. DeLaughter v. South Cent. Tractor Parts, 642 So. 2d 375 (Miss. 1994).

A finding by the Workers' Compensation Commission that a lumberyard worker had sustained only a 50 percent loss of wage-earning capacity, and therefore suffered only partial rather than total permanent disability, would be reversed where the evidence indicated that he had difficulty performing "make-work" tasks at his employer's lumberyard after he returned to work and that his efforts to find other employment were unsuccessful, and the Commission's finding was based on the conclusion that the employee should have been able to secure "some type of gainful employment" merely because he had a high school education. Barnes v. Jones Lumber Co., 637 So. 2d 867 (Miss. 1994).

A claimant was not entitled to permanent total disability benefits, even though his neurosurgeon and his chiropractor found him to be totally disabled, where the claimant continued to work full time for his employer and therefore showed no loss of wage earning capacity as a result of his injuries. Lanterman v. Roadway Express, Inc., 608 So. 2d 1340 (Miss. 1992).

Despite a claimant's increase in earnings, his earning capacity and his employability in the market place had been reduced due to Meniere's Syndrome where the presumption of earning capacity commensurate with post-injury earnings was rebutted by the following factors: (1) Meniere's Syndrome is a whole body disability; (2) it is lifelong in nature; (3) it affects the activities of daily living, both occupationally and socially; (4) the claimant's daily bouts with vertigo would put him at a disadvantage in an industrial setting where there were machines in operation; (5) one of the claimant's biggest fears was losing his balance and falling into one of the machines he was operating; and (6) there had been an increase in general wage levels for all employees in the claimant's class since 1984. Georgia-Pacific Corp. v. Gregory, 589 So. 2d 1250 (Miss. 1991).

A claimant may continue to be temporarily disabled, even though he or she has received maximum recovery from conservative care, if his or her condition can be improved by surgery. McGowan v. Orleans Furn., Inc., 586 So. 2d 163 (Miss. 1991).

The evidence was sufficient to support a finding that a claimant suffered only a 5 percent permanent partial occupational disability by reason of a work-connected injury to his left hand, where the claimant failed to offer evidence that he had unsuccessfully attempted to perform his usual duties, and he failed to offer evidence that he was refused employment based upon the disability to his hand in that he made no search for work outside his prior employment, stating that his car had been repossessed and he was without transportation. Walker Mfg. Co. v. Cantrell, 577 So. 2d 1243 (Miss. 1991).

A claimant who suffered a 25 percent permanent impairment to the body was not entitled to an award of permanent partial disability benefits since she did not establish a loss of wage earning capacity attributable to the compensable injury, where the evidence showed that she experienced an overall increase of post-injury wages and she offered no proof to rebut the presumption of no loss of wage earning capacity by showing that the post-injury earnings were not reliable in determining wage earning capacity. International Paper Co. v. Kelley, 562 So. 2d 1298 (Miss. 1990).

An employee's job-related contact dermatitis caused by exposure to sulfur dioxide constituted a permanent loss of wage earning capacity, such that the employee was entitled to permanent partial disability benefits, where the employee's sensitivity was permanent in nature so that he could not be exposed to sulfur dioxide in the future, and he made reasonable though unsuccessful efforts to find other comparably gainful employment. Piper Indus., Inc. v. Herod, 560 So. 2d 732 (Miss. 1990).

Generally, "medical" disability is the equivalent of functional disability and relates to actual physical impairment. "Industrial" disability is the functional or medical disability as it affects the claimant's ability to perform the duties of employment. Robinson v. Packard Elec. Div., GMC, 523 So. 2d 329 (Miss. 1988).

Since the disability contemplated by the Worker's Compensation Act is an occupational disability, an injured employee is entitled to compensation to the extent that he has been incapacitated to earn wages, and the fact that such employee retains substantial functional abilities in no way undercuts the conclusion that he or she may be totally occupationally disabled. Marshall Durbin, Inc. v. Hall, 490 So. 2d 877 (Miss. 1986).

A claimant who developed a work-related respiratory ailment made out a prima facie case of disability which was unrebutted by his employer where, after the claimant had presented evidence of his physical impairment, age, education, work experience, and unsuccessful efforts to secure employment, the employer failed to present any evidence from such sources as employment agencies clearly showing the local accessibility of substantial gainful employment suited to the claimant's medical condition. Pontotoc Wire Prods. Co. v. Ferguson, 384 So. 2d 601 (Miss. 1980).

In determining whether a claimant for worker's compensation is unable to earn wages in former or other employment so as to fall within the statutory definition of the term "disabled," the claimant has the burden of proof to make out a prima facie case for disability, after which the burden of proof shifts to the employer to rebut or refute the claimant's evidence. Thompson v. Wells-Lamont Corp., 362 So. 2d 638 (Miss. 1978).

The legislative intent, as expressed in subsection (9) of Code 1942, § 6998-02 [now subsection (i) of Code 1972, § 71-3-3] means that a claimant must, after his disability subsides, seek employment in another or different trade to earn his wages. B.J. Collins v. Mississippi Emp. Sec. Comm'n, 190 So. 2d 894 (Miss. 1966).

The 1960 amendment of this section [Code 1942, § 6998-02] does not operate to make medical findings the exclusive basis for establishing extent of disability. I. Taitel & Son v. Twiner, 247 Miss. 785, 157 So. 2d 44 (1963).

Since a claim for disability is separate and distinct from a claim for death benefits, the 1960 amendment to subsection (9) of Code 1942, § 6998-02 [now subsection (i) of Code 1972, § 71-3-3], requiring that incapacity and the extent thereof be supported by medical findings, did not eliminate the presumption of causal connection between the employment and death occurring while the employee is engaged in the duties of his employment, particularly since the 1960 amendment did not affect subsection (3) of Code 1942, § 6998-02 [now subsection (c) of Code 1972, § 71-3-3]. L.B. Priester & Son v. Bynum's Dependents, 244 Miss. 196, 142 So. 2d 30 (1962), overruled on other grounds, Wilson v. Mississippi Emp. Sec. Comm'n, 643 So. 2d 538 (Miss. 1994).

18. Employee, generally.

Workers' compensation death benefits were improperly awarded to a trucking company employee's wife because the fact that the employee remained at a truck stop bar for eleven hours drinking, and was then shot by a patron, was not reasonably incident to employment; the employee was not on a temporary personal errand. Total Transp., Inc. v. Shores, 968 So. 2d 456 (Miss. Ct. App. 2006), affirmed by 968 So. 2d 400, 2007 Miss. LEXIS 525 (Miss. 2007).

In order to establish the liability of the insurance carrier, it is essential that a contract of hire or apprenticeship, written or oral, expressed or implied, as required in subsection (4) of Code 1942, § 6998-02 [now subsection (d) of Code 1972, § 71-3-3] be proved. Sullivan v. Heirs of Sullivan, 192 So. 2d 277 (Miss. 1966).

Whether the relation between the mover of oil well drilling equipment and a member of a driller's crew who was injured while lending a hand to the mover in placing equipment was that of master and servant, so as to preclude an action for negligence, held to be for trier of the fact. Clark v. Luther McGill, Inc., 240 Miss. 509, 127 So. 2d 858 (1961).

In cases involving the question whether a person was an employee or an independent contractor, under workmen's compensation statutes the courts have applied the ordinary common-law tests, such as are applied in the actions of tort. Carr v. Crabtree, 212 Miss. 656, 55 So. 2d 408 (1951).

19. —Burden of proof.

Denial of workers' compensation benefits to an employee was inappropriate because the employee met his burden of proof showing that he had an injury, or an exacerbation of a preexisting injury, when he moved a desk at the behest of his supervisor. Any doubtful claims were to be resolved in favor of compensation. Short v. Wilson Meat House, LLC, 37 So. 3d 50 (Miss. Ct. App. 2009), reversed by 36 So. 3d 1247, 2010 Miss. LEXIS 310 (Miss. 2010).

Workers' compensation benefits claimant met the burden of showing a causal connection between a work injury and her disability based on the testimony of a doctor, despite the fact that his opinion was based upon the subjective medical history given by the claimant; this implicitly determined that the claimant was credible and moreover her complaints were referenced by two other doctors. AirTran, Inc. v. Byrd, 953 So. 2d 296 (Miss. Ct. App. 2007), reversed by, remanded by 987 So. 2d 905, 2007 Miss. LEXIS 569 (Miss. 2007).

When a claimant, having reached maximum medical recovery, reports back to his or her employer for work, and the employer refuses to reinstate or rehire the claimant, then it is prima facie that the claimant has met his or her burden of showing total disability; the burden then shifts to the employer to prove a partial disability or that the claimant has suffered no loss of wage earning capacity. Jordan v. Hercules, Inc., 600 So. 2d 179 (Miss. 1992), but see Dulaney v. National Pizza Co., 733 So. 2d 301 (Miss. Ct. App. 1998).

District Court did not err in allowing testimony that in prior death-claim suit against company, decedent's estate had argued decedent was not employee under Mississippi Workmen's Compensation Act. Estate's characterization of decedent as non-employee was sufficiently probative of whether he was employee that it was within discretion of District Court to allow testimony into evidence. Fishel v. American Sec. Life Ins. Co., 835 F.2d 613 (5th Cir. 1988).

20. —Factors.

The claimant was not an employee of the defendant company where (1) the company did not exercise or have the right to control the manner of the claimant's work, (2) the company did not control the method of payment to the claimant, (3) the company did not furnish equipment to the claimant, and (4) the company did not have the right to hire or fire the claimant. Shelby v. Peavey Elecs. Corp., 724 So. 2d 504 (Miss. Ct. App. 1998).

Verdict of jury that decedent was not employee was not against great weight of evidence, where he had his own offices, employed his own secretary, had numerous other clients, was not on company's payroll, received no salary, and billed company for his services. Fishel v. American Sec. Life Ins. Co., 835 F.2d 613 (5th Cir. 1988).

Where manager of lumber company contracted with company to purchase a bi-product formerly waste, and the manager employed the decedent as a truck driver to transport this bi-product, the lumber company was not liable for the death of the truck driver performing his duties for the manager, where there was no evidence that the lumber company controlled the manager in his operation or retained the right of control other than having the right to maintain free access to the lumberyard without interference by the manager's trucks. Granite State Ins. Co. v. Marshall, 275 So. 2d 386 (Miss. 1973).

The right of control rather than the actual exercise of control is a primary test of whether a person is an independent contractor or employee, and in a case where there is direct evidence of the right to control, the express or implied exercise of that right, the method of payment, the furnishing of equipment by financing its purchase, and the right to fire; a person so situated and engaged in cutting and hauling pulpwood for a timber dealer was not truly independent, performing an independent business service, but devoted all or most of his time to the dealer's business, was not an independent contractor but an employee of the dealer. Brown v. L.A. Penn & Son, 227 So. 2d 470 (Miss. 1969).

In determining the existence of an employer and employee relationship the right to control the employee is one of the dominant factors, but the ultimate right to control is not to be confused with immediate control, for it is the reserved right of control rather than its actual exercise that furnishes a true test of the relationship. Burnham Van Serv., Inc. v. Dependents of Moore, 250 Miss. 165, 164 So. 2d 733 (1964).

The workmen's compensation commission's finding that the deceased truck driver was an employee of the truck lessee was warranted by evidence showing that it was the truck lessee who exercised all the control necessary to see that its objectives were carried out in detail, and that the person who paid the truck driver's salary and had the right of discharge, exercised little or no control over the truck driver whatsoever. Burnham Van Serv., Inc. v. Dependents of Moore, 250 Miss. 165, 164 So. 2d 733 (1964).

The test of whether or not a person is an employee is not the exercise of, but the right to exercise control. Havens v. Natchez Times Publishing Co., 238 Miss. 121, 117 So. 2d 706 (1960), but see, Webster v. Mississippi Publishers Corp., 1989 Miss. Lexis 519 (Miss. Dec. 20, 1989).

21. —Independent contractor.

Denial of workers' compensation benefits to the employee was inappropriate because the finding that she was an independent contractor as set forth in Miss. Code Ann. § 71-3-3(r) was in error; the employer controlled the details of the employee's work by exercising total control over the newspaper racks at issue and she was thus deemed to have been an employee, not an independent contractor. Davis v. The Clarion-Ledger, 938 So. 2d 905 (Miss. Ct. App. 2006).

Company hired to complete specific drilling project for worker's employer was independent contractor and, thus, was not immune from negligence suit under exclusive remedy provision of workers' compensation law as company was sufficiently outside of employer's right to control to assume responsibility for torts of employees. Luther McGill, Inc. v. Bradley, 674 So. 2d 11 (Miss. 1996).

Subcontractor is not employee of prime contractor, but is instead independent contractor that also happens to be subcontractor; subcontractor is in much better position than mere employee to distribute cost of potential tort liability, as it may include in its subcontract bid price increase which reflects possible tort liability, and to provide immunity would be to totally insulate potential wrongdoer without imposing any obligation, thus tacitly encouraging subcontractors to use less than due care. Estate of Morris v. W.E. Blain & Sons, 511 So. 2d 945 (Miss. 1987).

A construction firm contracted by a corporation to produce and install a finished product in accordance with its own methods, without being subject to corporation control, and with corporation required to furnish construction firm with a crane and an operator at its own cost, is an independent contractor rather than an employee. Ramsey v. Georgia-Pacific Corp., 511 F. Supp. 393 (S.D. Miss. 1981), aff'd, 671 F.2d 1376 (5th Cir. 1982), reh'g denied, 673 F.2d 1321 (5th Cir. 1982).

In an action for compensation benefits by an employee of a logging company which performed services for the plaintiff corporation, the trial court properly held that the logging company was an employee of the plaintiff and that the employee of the logging company was entitled to compensation benefits from the plaintiff where the evidence established that the work done by the logging company was an integral part of the business of the plaintiff and that the plaintiff had complete control of the operations of the logging company. Georgia-Pacific Corp. v. Crosby, 393 So. 2d 1348 (Miss. 1981).

Where timber dealer employed several methods of acquiring pulpwood, and no doubt some of the people performing work for it were its employees, nevertheless the relationship between the dealer and workmen's compensation claimant was that of vendor and vendee, since the claimant furnished his own truck, did his own cutting from his father's farm, and the dealer had no connection with the acquisition of the stumpage, and the claimant had not engaged in the pulpwood business prior to the cutting and sale of the loads, one of which he was injured on. Saxton v. L.A. Penn & Sons, 284 So. 2d 521 (Miss. 1973).

A claimant who, together with others engaged in similar activities, cut and hauled pulpwood for a timber dealer under circumstances which constituted him and the other haulers an integral part of the regular business of the dealer was not furnishing an independent business or professional service, was actually under the dealer's direction and control and, consequently, could not be said to be an independent contractor. Brown v. L.A. Penn & Son, 227 So. 2d 470 (Miss. 1969).

22. —Particular persons.

An employer's workers' compensation carrier would be liable for the injuries of an employee who was injured while changing a neighboring business' outdoor advertising sign where the employer had a policy of goodwill toward its business neighbors, which included changing the sign for the neighboring business, and the employees were expected to help foster the goodwill policy; since the employee acted in conformity with his employer's dictates, he acted in the course and scope of his employment, and was not a loaned servant to the neighboring business. Quick Change Oil & Lube, Inc. v. Rogers, 663 So. 2d 585 (Miss. 1995).

A student nurse who was injured while engaged in clinical training by a hospital was an apprenticeship employee of the hospital within the meaning of the Workers' Compensation Act, where the student nurse rendered services to the hospital with the primary purpose of learning the "business" of the hospital necessary to acquire her license as an LPN, the hospital received payment from the public for the services rendered by the student nurse, and the student nurse received a "similar advantage," i.e. training, from the hospital which qualified as a "wage" under the statutory definition. Walls v. North Miss. Medical Ctr., 568 So. 2d 712 (Miss. 1990).

An independent oil and gas lease broker, who hired an employee to secure leases on behalf of an oil company, was not a subcontractor where the oil company purchased the leases on its own behalf; thus, the oil company was not liable to the employee for worker's compensation benefits. Amoco Prod. Co. v. Murphy, 528 So. 2d 1123 (Miss. 1988).

Subcontractor is not employee of prime contractor, but is instead independent contractor that also happens to be subcontractor; subcontractor is in much better position than mere employee to distribute cost of potential tort liability, as it may include in its subcontract bid price increase which reflects possible tort liability, and to provide immunity would be to totally insulate potential wrongdoer without imposing any obligation, thus tacitly encouraging subcontractors to use less than due care. Estate of Morris v. W.E. Blain & Sons, 511 So. 2d 945 (Miss. 1987).

Store manager's husband, a store employee working in a service and maintenance capacity, who initiated a criminal embezzlement charge against the store cashier was an employee and not a third person within § 71-3-3(b), and the store cashier's malicious prosecution action predicated on husband's action was not precluded by the Worker's Compensation Act. Royal Oil Co. v. Wells, 500 So. 2d 439 (Miss. 1986).

A timber dealer who engaged claimant to cut and haul pulpwood from lands in substantially all of which the dealer had previously acquired the timber rights, who deducted from sums due claimant his gasoline, grocery, clothing and truck finance charges, and settled with claimant weekly for balances due for pulpwood cut and hauled by him, was in fact claimant's employer, and liable for compensation payments due claimant for injuries sustained in the course of his work. Brown v. L.A. Penn & Son, 227 So. 2d 470 (Miss. 1969).

Immunity from tort liability does not exist in the case of injury to a loaned employee with whom no contract of hire has been made. Index Drilling Co. v. Williams, 242 Miss. 775, 137 So. 2d 525, 8 A.L.R.3d 323 (1962).

That a workmen's compensation insurance policy extends to executives does not render the insurer liable for compensation awarded to officers serving without pecuniary remuneration affording a basis for paying premiums. Le-Co Gin Co. v. Stratton, 241 Miss. 623, 131 So. 2d 450 (1961).

One engaged to deliver newspapers to subscribers on a motor carrier route, who is required to canvass for additional subscribers, to deliver papers promptly, to sell at established rates, and, in event of relinquishing the route, to endeavor to find a successor, held, under the statute prior to an amendment in 1956, excluding such individuals from the benefit of Workmen's Compensation Law, to be an employee rather than an independent contractor and therefore entitled to compensation for injuries sustained in a highway collision while delivering papers. Havens v. Natchez Times Publishing Co., 238 Miss. 121, 117 So. 2d 706 (1960), but see, Webster v. Mississippi Publishers Corp., 1989 Miss. Lexis 519 (Miss. Dec. 20, 1989).

Magazine solicitors whose compensation for orders obtained is retained out of the subscription price are not employees in view of subsection (4) of Code 1942, § 6998-02 [now subsection (d) of Code 1972, § 73-3-3 [Repealed]]. Statham v. Blaine, 234 Miss. 649, 107 So. 2d 93 (1958), motion granted, 234 Miss. 669, 108 So. 2d 213 (1959).

A workman may be an independent contractor as to certain work and yet be an employee, or servant, as to other work for the same employer. Mills v. Jones' Estate, 213 Miss. 680, 56 So. 2d 488 (1952), modified, 213 Miss. 685, 57 So. 2d 496 (1952), overruled on other grounds, Railway Express Agency, Inc. v. Hollingsworth, 221 Miss. 688, 75 So. 2d 639 (1954).

23. Injury, generally.

Where the employee sustained a back injury when she slipped and fell against the back of the toilet at work, the administrative law judge correctly determined that the employee was engaged in a personal-comfort activity that was reasonably incident to her employment for purposes of Miss. Code Ann. § 71-3-3(b). The Mississippi Workers' Compensation Commission's denial of workers' compensation benefits based on a finding that the employee had a degenerative condition was not supported by substantial evidence, because a doctor testified that the employee's pre-existing problems did not cause the disc rupture; the Court of Appeals of Mississippi held that the employee was entitled to receive benefits. White v. Miss. Dep't of Corr., 28 So. 3d 619 (Miss. Ct. App. 2009), writ of certiorari denied by 27 So. 3d 404, 2010 Miss. LEXIS 101 (Miss. 2010).

Mississippi Workers' Compensation Commission (Commission) properly found that there was no presumption of a casual connection between the husband's work and his death, Miss. Code Ann. § 71-3-3(b), and the wife failed to prove that her husband's death was work-related; substantial evidence supported the Commission's decision. Curl v. Quality Aluminum Prods., 996 So. 2d 181 (Miss. Ct. App. 2008).

Compensability is resolved by determining whether the injury is an accidental one under the definition of Miss. Code Ann. § 71-3-3(b), which includes injuries caused by a willful act committed by someone who is a stranger to the employment relationship. Thus, injuries resulting from willful or intentional acts by fellow employees are not "accidental" and are not claims subject to the exclusive remedy provision of the Workers' Compensation Act. Goodman v. Coast Materials Co., 858 So. 2d 923 (Miss. Ct. App. 2003).

Trial court improperly dismissed an employee's common law tort action, which sought to recover for injuries from a work-related fistfight with the owner of the employer; there is still a recognized right to bring a civil suit against an employer for some intentional torts committed by co-employees. Goodman v. Coast Materials Co., 858 So. 2d 923 (Miss. Ct. App. 2003).

Trial court erred in dismissing saleswoman's complaint that alleged a management-level employee willfully and intentionally injured her by pulling on her arm in order to take the saleswoman to an office for disciplinary action as the saleswoman's allegations took her complaint out of the province of the Worker's Compensation Act which recognized claims for workers injured in the scope and course of employment through negligent or grossly negligent acts. Blailock v. O'Bannon, 795 So. 2d 533 (Miss. 2001).

Claim denied where claimant's testimony was contradicted about whether the first claimed incident even occurred, and whether he was actually injured due to the second incident. In addition, there was testimony that claimant had a limp from the first day on the job, which defeated the "injury arising out of and in the course of employment" element as well. Edwards v. Marshall Durbin Farms, Inc., 754 So. 2d 566 (Miss. Ct. App. 2000).

The additional requirement in the restated definition of "injury" in § 71-3-3(b) that the injury result from "an untoward event or events" merely codifies existing law as follows: (1) an unexpected event is by external definition an untoward event and harm resulting from it is covered as an injury; (2) an unexpected result (harm to a worker) of usual work activity is an untoward event and the resulting harm is covered as an injury; (3) if the harm to the worker includes physical results, there is an "accidental injury" if either the event resulting in harm or the harm itself is unexpected; and (4) when an injury with physical results develops gradually from the work and cannot be traced to a single event or to a precise time, the injury meets the requirement of accidental injury if it is causally connected to the work activities or environment and the events are "within a reasonably definite and not too remote period of time." KLLM, Inc. v. Fowler, 589 So. 2d 670 (Miss. 1991).

The addition of the phrase "in a significant manner" to § 71-3-3(b) states what was already implicit in the workers' compensation law. Requiring the work and injury to be causally connected in a significant manner is nothing more than a requirement that the work connection be supported by substantial evidence as minimally causative of the injury. KLLM, Inc. v. Fowler, 589 So. 2d 670 (Miss. 1991).

In § 71-3-3, the words "arising out of and in the course of" present an inquiry whether the risk which has given rise to the injury is reasonably incident to the employment, not whether the work was the proximate cause of the injury. Fought v. Stuart C. Irby Co., 523 So. 2d 314 (Miss. 1988).

The disability contemplated by the Worker's Compensation Act is an occupational disability, not a medical disability. Marshall Durbin, Inc. v. Hall, 490 So. 2d 877 (Miss. 1986).

Disability is determined by the extent of actual physical injury and the de facto wage loss. I. Taitel & Son v. Twiner, 247 Miss. 785, 157 So. 2d 44 (1963).

Pain alone, which does not produce incapacity to work, is not compensable. Rivers Constr. Co. v. Dubose, 241 Miss. 527, 130 So. 2d 865 (1961).

For an injury to be compensable under the Workmen's Compensation Law it is not necessary that an accidental injury, as defined in the law, resulted suddenly, nor that it resulted from the application of external force. Tate v. Dr. Pepper Bottling Co., 220 Miss. 311, 70 So. 2d 602 (1954).

24. — Caused by co-employees.

Finding that the employee's injury did not arise out of his employment was proper where an injury from a third party assault that occurred due to a purely personal vendetta or disagreement did not arise out of the employment pursuant to Miss. Code Ann. § 71-3-7 and Miss. Code Ann. § 71-3-3(b). In the case, the assault arose solely from the employee's personal disagreement with a co-employee concerning a $10 loan. Sanderson Farms, Inc. v. Jackson, 911 So. 2d 985 (Miss. Ct. App. 2005).

Deceased employee's heirs' characterization of an employer's actions and inaction in their attempt to avoid the exclusivity bar of Miss. Code Ann. § 71-3-3(b) could not transform conduct that might well have been grossly negligent or reckless into the kind of "intent to injure" needed to avoid the bar. McCall v. Lockheed Martin Corp., — F. Supp. 2d —, 2005 U.S. Dist. LEXIS 42962 (S.D. Miss. Aug. 26, 2005).

In finding that the exclusivity bar under Mississippi's Workers Compensation Act did not apply to a wrongful death action of an employee, arising from a co-worker's shooting rampage, the court relied on the conclusion reached in prior Mississippi cases that injuries resulting from the willful or intentional acts by fellow employees were not accidental, as defined in Miss. Code Ann. § 71-3-3(b), which followed from the fact that the statutory definition included injuries causes by a willful act committed by someone who was a stranger to the employment relations. Tanks v. Lockheed-Martin Corp., 332 F. Supp. 2d 953 (S.D. Miss. 2004).

Employee who was assaulted in her apartment parking lot by her co-worker and roommate was not entitled to compensation because she was not injured by a willful act directed against her because of her employment and while so employed and working on the job. Hawkins v. Treasure Bay Hotel & Casino, 813 So. 2d 757 (Miss. Ct. App. 2001).

Under §§ 71-3-9 and 71-3-3(b), an employee's claim for damages resulting from false imprisonment by her employer was not barred by the exclusivity of the remedies available under the Workmen's Compensation Act, since the Act governs only injuries compensable under it, since injuries sustained as the result of a false imprisonment are not the result of accident, but rather arise from a willful act, which injuries are compensable under the Act only if caused by the willful act of a third person, and since the term "third person" refers either to a stranger to the employer-employee relationship, or to a fellow employee acting outside the course and scope of his employment; thus, a declaration alleging that an employee was falsely imprisoned by the head of her employer's security department, and questioned concerning an amount of money missing from her department, was improperly dismissed. Miller v. McRae's, Inc., 444 So. 2d 368 (Miss. 1984).

25. —Caused by third persons.

Finding that workers' compensation benefits were wrongfully denied to the employee was appropriate because the case was doubtful as to whether the existence of any real or imagined relationship between the former coworker and the employee was the sole cause of the employee's injuries; doubtful claims were to be resolved in favor of compensation. Int'l Staff Mgmt. & Legion Ins. Co. v. Stephenson, 46 So. 3d 367 (Miss. Ct. App. 2010), writ of certiorari denied by 49 So. 3d 636, 2010 Miss. LEXIS 564 (Miss. 2010).

In a workers' compensation death benefits case, the decedent employee's wife was improperly awarded benefits because the extended escapade the employee (a trucker) went on at a truck stop bar exposed him to risks that could not reasonably be viewed as being associated with the trucking business or arising out of or in the course of his employment when he was shot by a fellow bar patron. Total Transp., Inc. v. Shores, 968 So. 2d 456 (Miss. Ct. App. 2006), affirmed by 968 So. 2d 400, 2007 Miss. LEXIS 525 (Miss. 2007).

Under §§ 71-3-9 and 71-3-3(b), an employee's claim for damages resulting from false imprisonment by her employer was not barred by the exclusivity of the remedies available under the Workmen's Compensation Act, since the Act governs only injuries compensable under it, since injuries sustained as the result of a false imprisonment are not the result of accident, but rather arise from a willful act, which injuries are compensable under the Act only if caused by the willful act of a third person, and since the term "third person" refers either to a stranger to the employer-employee relationship, or to a fellow employee acting outside the course and scope of his employment; thus, a declaration alleging that an employee was falsely imprisoned by the head of her employer's security department, and questioned concerning an amount of money missing from her department, was improperly dismissed. Miller v. McRae's, Inc., 444 So. 2d 368 (Miss. 1984).

A convenience store clerk, who was raped in the course of a store robbery, was injured as a consequence of conditions brought about by risks of the work environment, and thus her exclusive remedy was under Miss Code § 71-3-9. Williams v. Munford, Inc., 683 F.2d 938 (5th Cir. 1982).

In a workmen's compensation case arising out of the murder of a taxicab driver who had been dispatched to pick up a fare between one and two hours before his body was discovered by the police about a block away from his cab, the victim's dependents were properly awarded benefits where they had presented facts from which the Workmen's Compensation Commission could reasonably infer that the driver had been engaged in his employer's business at the time of the attack, and that his employment had exposed him to the hazard of robbery or assault. Johnson v. Roundtree, 406 So. 2d 810 (Miss. 1981).

The dependent of a deceased employee of a service station was properly granted workmen's compensation benefits where the deceased employee had been shot and killed by the husband of the deceased employee's supervisor, who was also a supervisor at the service station, and where the evidence supported the conclusion that the deceased employee had thought that he was involved in a work-related activity when he was called over to the husband's automobile, despite the fact that the confrontation arose because of the employee's relationship with the wife. Kerr-McGee Corp. v. Hutto, 401 So. 2d 1277 (Miss. 1981).

A route salesman who stopped to assist an apparently disabled motorist and who was rendered permanently and totally disabled when the motorist struck him with a gun was entitled to workmen's compensation, despite the employer's contention that his injuries did not arise out of and in the course of his employment; an employer may reasonably foresee that his traveling employee will stop to aid a distressed motorist when implored to do so, and since the present claimant's injury resulted from a humanitarian act which was literally thrown into his path because of his employment, the employee was entitled to compensation. The singular purpose pervading the Workmen's Compensation Act is to promote the welfare of laborers within the state (§ 71-3-1), and it should be construed fairly to further its humanitarian aims. Big "2" Engine Rebuilders v. Freeman, 379 So. 2d 888 (Miss. 1980).

Evidence that the employee was murdered by a jilted suitor and that the only connection between her employment and the cause of her death was that she was on duty at the time she was shot and was merely informing the slayer of the rules of the telephone company prohibiting visitors in the operating room at the telephone exchange, and immediately after shooting the employee the slayer turned a pistol upon himself and committed suicide, failed to establish that the employee was killed because of her employment, since the act of the slayer in committing suicide negatived the idea that he killed the employee because of her employment, and thus the employee was not within the protection of the Workmen's Compensation Law. West's Estate v. Southern Bell Tel. & Tel. Co., 228 Miss. 890, 90 So. 2d 1 (1956).

26. —Other particular causes of injuries.

Employee was not entitled to workers' compensation benefits for injuries arising out of an accident that occurred during her lunch hour while the employee was crossing a public street because the employee was not a traveling employee, the personal comfort doctrine was not applicable, and the threshold doctrine was not applicable. The employee's injuries did not take place during the course of her employment. Bouldin v. Miss. Dep't of Health, 1 So. 3d 890 (Miss. Ct. App. 2008), writ of certiorari denied by 999 So. 2d 1280, 2009 Miss. LEXIS 11 (Miss. 2009).

Substantial evidence supported the determination that the claimant's asthma was work-related where two physicians testified that the claimant's asthma was aggravated by work exposure to chemicals. International Paper Co. v. Greene, 773 So. 2d 399 (Miss. Ct. App. 2000).

The claimant suffered injury as defined in subsection (b) of this section when he had a heart attack while on the job because job related stress adversely affected, contributed to, and aggravated the claimant's medical condition as he routinely disposed of his duties. City of Laurel v. Blackledge, 1999 Miss. App. LEXIS 333 (Miss. Ct. App. June 22, 1999), subst. op., 755 So. 2d 573 (Miss. Ct. App. 2000).

An employee's injury did not arise out of and in the course of his employment as a sack boy at a grocery store where the injury occurred when a firecracker which the employee had been given by another worker exploded in his hand, and the store had a policy of no foul play, which included fireworks, so that the employee's conduct was against the rules of the business; the accident and injury were the result of the employee's own misuse of and involvement with an object which was prohibited and outside the scope of the employee's employment, and therefore the injury sustained was not compensable. Mathis v. Nelson's Foodland, Inc., 606 So. 2d 101 (Miss. 1992).

The evidence was sufficient to support a finding by the Workers' Compensation Commission that noise at an employee's work site was a contributing, precipitating, or aggravating factor in the production of Meniere's Syndrome, even though the etiology of Meniere's Syndrome is largely unknown, where there was substantial evidence that exposure to high intensity noise for a period of years at the work site contributed to, aggravated or accelerated the employee's condition, and this evidence was not controverted by any direct medical evidence. Georgia-Pacific Corp. v. Gregory, 589 So. 2d 1250 (Miss. 1991).

Injuries sustained by employee in airplane crash arose out of and in course of employment where employer ordered employee into plane so that employee could be taken to work location. National Aviation Underwriters v. Caldwell, 689 F. Supp. 639 (N.D. Miss. 1988).

27. —Mental injuries.

Although a clear and convincing evidence standard was inapplicable to a worker's claim of mental injury allegedly resulting from physical injury, the claim was properly denied because there was substantial evidence to support a finding that the worker failed to prove a causal connection between the mental and physical injuries even by "clear evidence." Daniels v. Peco Foods of Miss., Inc., 980 So. 2d 360 (Miss. Ct. App. 2008).

Workers' compensation claimant could not receive compensation for his nervous breakdown where there was conflicting medical testimony as to whether his condition was work-related under Miss. Code. Ann. § 71-3-3 (b), and claimant's testimony of longer workdays and higher pressure during period preceding his breakdown was uncorroborated. McElveen v. Croft Metals, Inc., 915 So. 2d 14 (Miss. Ct. App. 2005).

Appellate court held that an agency determination that a worker who claimed that she was totally disabled from performing her job as a retail store manager as a result of headaches and depression allegedly caused by extremely stressful working conditions over a number of years had not shown a compensable mental illness for the purposes of workers' compensation was not clearly erroneous; worker failed to show that her condition was the result of working conditions that were different from those experienced by other workers or were caused or aggravated by a work-related physical injury. Kirk v. K-Mart Corp., 838 So. 2d 1007 (Miss. Ct. App. 2003).

Employee's claim for disability benefits for a mental injury was properly denied as insufficient evidence was presented to prove a causal connection between the employee's work and her mental injuries, namely, her long history of battling depression. Page v. Zurich Am. Ins. Co., 825 So. 2d 721 (Miss. Ct. App. 2002).

A claimant failed to make the requisite showing that her mental condition was causally connected to her employment where 2 doctors testified that the claimant had suffered from psychological disorders prior to the incident alleged to have caused her mental injury, the Workers' Compensation Commission found the testimony of another doctor, who diagnosed the claimant as having severe post-traumatic stress disorder and major depression with some psychotic symptoms, to be unconvincing, and the incident alleged to have caused the claimant's mental injury-a private meeting with her supervisor during which the supervisor threatened to fire her-was not an "untoward event." Bates v. Countrybrook Living Ctr., 609 So. 2d 1247 (Miss. 1992).

The evidence was sufficient to support the Workers' Compensation Commission's finding that an employee's mental disability was caused by a deliberate course of conduct by his employer and that there was nothing in his psychological background to suggest a pre-existing personality disorder, so that the stresses to which the employee was subjected were "more than the ordinary incidents of employment" and were "untoward events or unusual occurrences" culminating in his subsequent disability, where a psychiatrist who treated the employee for over 2 years testified that the employee was psychologically disabled and that his work played a significant part in causing it, and testimony from the employee, the employee's wife, and fellow employees established a protracted pattern by the employer to put pressure and stress upon the employee. Borden, Inc. v. Eskridge, 604 So. 2d 1071 (Miss. 1991).

In order to be compensable, a mental injury, unaccompanied by physical trauma, must have been caused by something more than the ordinary incidents of employment. Fought v. Stuart C. Irby Co., 523 So. 2d 314 (Miss. 1988).

Worker's injury resulting from hysterical conversion reaction when employer, through agent, deliberately creates heightened expectation of advancement in particular worker and then triggers reaction by doing something worker could reasonably perceive as betrayal is compensable. Brown & Root Constr. Co. v. Duckworth, 475 So. 2d 813 (Miss. 1985).

Mental injury of worker unaccompanied by physical trauma is not directly linked to untoward event, unusual occurrence, accident or injury incident to employment, as required for worker to be entitled to worker's compensation benefits, where worker claims that mental injury results from termination of worker due to business conditions eliminating need for worker's employment; if worker were entitled to benefits at all, it would only be to apportioned benefits if worker has long history of mental and emotional disorders prior to termination. Smith & Sanders, Inc. v. Peery, 473 So. 2d 423 (Miss. 1985).

Incapacity for work due to mental condition not resulting from work-connected injury is not compensable. International Paper Co. v. Wilson, 243 Miss. 659, 139 So. 2d 644 (1962).

28. —Occupational diseases.

Physicians' testimony that smoking would not have caused the fibrotic scarring to the lungs that the employee suffered, was not wholly conclusive, but was supported by substantial evidence, as was evidence of the employee's decreased earning capacity, because the employee required the assistance of a co employee for more strenuous tasks; thus, the employee's award of benefits for permanent disability and loss of wage-earning capacity was proper. Cooper Tire & Rubber Co. v. Harris, 837 So. 2d 789 (Miss. Ct. App. 2003).

Disability resulting from an occupational disease is not compensable under the Workmen's Compensation Law. Heckford v. International Paper Co., 242 Miss. 337, 135 So. 2d 415 (1961).

Arteriosclerosis is not an occupational disease. Capital Broadcasting Co. v. Wilkerson, 240 Miss. 64, 126 So. 2d 242 (1961).

29. —Other particular injuries.

Denial of the employee's claim for medical and disability benefits was appropriate under Miss. Code Ann. § 71-3-3(b) because the employee's medical experts were unable to ascertain to a reasonable degree of medical probability that the employee's lung and heart problems were the result of his having been exposed to the cleaner. Further, the employee provided inconsistent accounts with regard to the incident itself. Langford v. Southland Trucking, LLC, 30 So. 3d 1266 (Miss. Ct. App. 2010).

Where the employees' injuries arose out of and in the course of employment, under Miss. Code Ann. § 71-3-3(b), their claims of battery and intentional infliction of emotional distress against the employer were not precluded by the Mississippi Workers' Compensation Act, Miss. Code Ann. § 71-3-9, as a matter of law. Franklin Corp. v. Tedford, — So. 3d —, 2009 Miss. LEXIS 169 (Miss. Apr. 16, 2009), opinion withdrawn by, substituted opinion at 18 So. 3d 215, 2009 Miss. LEXIS 426 (Miss. 2009).

In a case where an employee fell over dead from a heart attack while waiting to get trained on a new machine, several benefit claimants were not entitled to recover workers' compensation benefits under Miss. Code Ann. § 71-3-3(b) because there was no causal connection shown; the employee did not have any unusual assignments or work conditions, and the medical evidence established that the death was not work-related. Harbin v. Outokumpu Heatcraft USA, LLC, 958 So. 2d 1260 (Miss. Ct. App. 2007).

Where several doctors opined that an employee's repetitive act of reaching for a time clock 300 to 400 times per day aggravated a pre-existing condition, temporary total disability benefits were properly awarded due to Miss. Code Ann. § 71-3-3(b). Casino Magic v. Nelson, 958 So. 2d 224 (Miss. Ct. App. 2007).

Evidence was sufficient to establish that the claimant had a permanent medical impairment attributable to his coronary condition and that the claimant's coronary artery disease and the associated blockage were related to the stress of his employment as a firefighter because the claimant's physician noted that the job the claimant worked was stressful and stated that the stress of his job had a real contributing factor and that the claimant continued to be unable to work and should be considered totally and permanently disabled. City of Laurel v. Blackledge, 755 So. 2d 573 (Miss. Ct. App. 2000).

There was substantial evidence supporting a finding by the Workers' Compensation Commission that a claimant's impairment was a whole body injury rather than a schedule numbered injury only, where a physician identified the claimant's malady as Meniere's Syndrome, and he testified that Meniere's Syndrome is "an inner ear dysfunction that appears to be lifelong in nature" and that it affected the entire body in that, in addition to a loss of hearing, it involved a balance dysfunction affecting the claimant's activities of daily living, both occupationally and socially. Georgia-Pacific Corp. v. Gregory, 589 So. 2d 1250 (Miss. 1991).

An injury sustained by an employee when he fell during work, as a result of alcohol withdrawal syndrome, and struck the employer's concrete floor, constituted an "injury" as defined in § 71-3-3; any injury sustained by an employee resulting from a fall upon a work premise floor is a confrontation with a condition of employment which contributed to the employee's injury and "arises out of and in the course of employment" as a matter of law. Smith v. Container Gen. Corp., 559 So. 2d 1019 (Miss. 1990).

Lordosis and obesity held not such physical handicap as to require apportionment of compensation to employee who twisted knee in turning to pick up bundle. I. Taitel & Son v. Twiner, 247 Miss. 785, 157 So. 2d 44 (1963).

30. —Proof of injuries.

Court of appeals erred in finding that an employee made a prima facie showing of permanent total disability and in awarding her compensation because the substantial evidence supported a finding that the employee did not have a permanent, total disability, and there was substantial evidence that the lack of employment was not due to the employee's injury; the employee's termination notice stated that she was being terminated due to her probationary status rather than as a consequence of her injury, and the Mississippi Workers' Compensation Commission's conclusion that the employee was unable to find employment due to the depressed economic conditions in the area where she lived and not to the injury itself was based on substantial evidence presented by the employee's expert. he employee was terminated from her position with the group home shortly after her accident. Lott v. Hudspeth Ctr., 26 So. 3d 1044 (Miss. 2010).

Where there was conflicting medical evidence regarding a claimant's lumbar condition and her need for lumbar spine injury, an appellate court could not say that the Workers' Compensation Commission's decision to deny benefits was arbitrary and capricious. Washington v. Woodland Vill. Nursing Home, 25 So. 3d 341 (Miss. Ct. App. 2009), writ of certiorari denied by 24 So. 3d 1038, 2010 Miss. LEXIS 2 (Miss. 2010).

Substantial evidence supported the Mississippi Workers' Compensation Commission's decision that the employee sustained a permanent medical and occupational disability as a result of her lower back injury under Miss. Code Ann. § 71-3-3(i) because the second functional capacity evaluation concluded that the employee was not able to return to her regular duties and that she was only able to lift at the sedentary range. Whirlpool Corp. v. Wilson, 952 So. 2d 267 (Miss. Ct. App. 2006).

In a workers' compensation case, a claimant's treating physician stated in his deposition that the claimant's cerebral hemorrhage was caused by poorly controlled hypertension and could not be related to the stress of his employment to a reasonable degree of medical probability; there was nothing in the record to suggest that the opinion of the treating physician was not credible evidence upon which the Mississippi Workers' Compensation Commission was entitled to rely. Also, the Commission acted within its discretion in discounting another doctor's testimony since that doctor had not examined the claimant or even spoken with him, and had failed to review all of the pertinent medical records; therefore, the Commission's decision denying the claimant workers' compensation benefits was neither arbitrary nor capricious as the treating physician's testimony provided substantial support for the Commission's finding that the claimant had failed to show that his intracerebral hemorrhage was caused or contributed to by the stress he experienced in his employment as a deputy sheriff. Mabry v. Tunica County Sheriff's Dep't, 911 So. 2d 1038 (Miss. Ct. App. 2005).

Employee proved that she had a loss of wage-earning capacity under Miss. Code Ann. § 71-3-3(i) because she testified that her supervisors required her to return to full duty on the assembly line or leave and that after she resigned she contacted 11 different businesses seeking employment without success and that she registered with the Mississippi Employment Security Commission (now Department of Employment Security). Whirlpool Corp. v. Wilson, 952 So. 2d 267 (Miss. Ct. App. 2006).

Employee's injury was compensable under Miss. Code Ann. § 71-3-3(b) because there was no doubt that a doctor's expert medical opinion supported the Workers' Compensation Commission's decision regarding the employee's injury; while there was a conflict in expert medical opinion, the appellate court was not permitted to resolve conflicts in the evidence based on its mandated presumption that the commission resolved all such conflicts. Union Camp Corp. v. Hall, 955 So. 2d 363 (Miss. Ct. App. 2006), writ of certiorari dismissed by 956 So. 2d 228, 2007 Miss. LEXIS 215 (Miss. 2007).

Appellate court affirmed a determination that a claimant was not entitled to partial permanent disability benefits under Miss. Code Ann. Miss. Code Ann. § 71-3-3(i) as the claimant failed to establish that he had sought similar work as a tire builder and that the employer had refused to rehire or reinstate him. Havard v. Titan Tire Corp., 919 So. 2d 995 (Miss. Ct. App. 2005).

Medical testimony from the employee's treating physicians supported the permanence of his disability as follows: (1) one physician testified that he had suffered a 20 percent permanent medical impairment to his entire body due to his neck injury' (2) a second physician restricted him to medium duty based on clinical examinations, diagnostic tests, and his complaints of pain; (3) three years after the accident, the employee was further restricted to light duty; and (4) a third physician concluded that he would "never be able to return to duty without severe spasm." The record was clear that he was unable to return to his work as a diesel mechanic due to his injury, and that he had also incurred a 50 percent reduction in his earning capacity given his pain, his age, and his occupational history. Bryan Foods, Inc. v. White, 913 So. 2d 1003 (Miss. Ct. App. 2005), writ of certiorari denied by 921 So. 2d 344, 2005 Miss. LEXIS 710 (Miss. 2005).

Trial court did not err in compensating an employee for a cervical injury; the injury was compensable under Miss. Code Ann. § 71-3-3(b) because it was work-related, there was substantial evidence of the injury, and the employee's claim of disability was supported by medical findings as required by Miss. Code Ann. § 71-3-3(i). Howard Indus. v. Robinson, 846 So. 2d 245 (Miss. Ct. App. 2002).

The Workers' Compensation Commission's denial of benefits to an asthmatic employee would be reversed, even though a physician testified that there was not a "strong work-related causal connection between [the employee's] pneumonia and emphysema," where medical testimony established a causal connection between the exacerbation of her pre-existing respiratory problems and the inhalation of irritants in her work environment, and the employee's uncontroverted testimony of the onset pain in her side and back along with shortness of breath while she was performing her job duties established that her injury arose out of and in the course of her employment. Hedge v. Leggett & Platt, Inc., 641 So. 2d 9 (Miss. 1994).

The circuit court did not err in reversing the Workers' Compensation Commission's finding that a claimant with a back injury had reached maximum medical improvement and suffered no permanent disability where there was evidence that the claimant had 2 ruptured discs surgically removed, specialists who initially concluded that the claimant had no ruptured discs did not later examine him after the discovery of the ruptured discs was made, and the employer failed to show that the claimant suffered any disassociated intervening injury which caused the ruptured discs, their surgical removal and the resulting disability. Marshall Durbin Cos. v. Warren, 633 So. 2d 1006 (Miss. 1994).

A finding that a claimant was not entitled to permanent disability benefits because his disability, which arose from slippage in the spine, was attributable entirely to preexisting spondylolisthesis was not supported by substantial evidence where there was conflicting medical testimony from 2 treating physicians as to the cause of the claimant's permanent disability and neither physician could determine how and when the slippage actually occurred, since close questions of compensability should be resolved in favor of the claimant, and the Workers' Compensation Act should be liberally construed to carry out its remedial purpose. McNeese v. Cooper Tire & Rubber Co., 627 So. 2d 321 (Miss. 1993).

Certainty is not a requisite in deciding a workers' compensation case, but, rather, the reviewing court considers reasonable medical probabilities. In other words, medical findings sufficient to show a compensable disability are not required to be precise, complete and unequivocal. Georgia-Pacific Corp. v. Gregory, 589 So. 2d 1250 (Miss. 1991).

The evidence supported a finding that an employee suffered a 100 percent industrial loss of use of his left leg, rather than only a 40 percent loss, even though the employee's treating physician testified that the employee had a 40 percent permanent partial impairment of his left leg, where the physician also testified that the employee would be limited in activities such as standing for long periods, climbing ladders and stairs, and carrying heavy loads but that he could work in sedentary types of positions where he could sit to do the work, the employee was a 43-year-old man who dropped out of school during the 10th grade, from that time until the time of his injury he worked in construction, did carpentry work, and delivered furniture, at the time of the injury he was employed at a furniture company where he did not perform any one particular job but was moved around from job to job as needed, some of the jobs that he performed at the company included working in the sanding department, cutting out chest-of-drawer tops, and working in the mill, the employee testified that after his injury he could not do carpentry work and could not do any jobs which required him to stand but he could sand edges and use a table saw, and he testified that he continued to have problems with his leg every day, including swelling and pain. McGowan v. Orleans Furn., Inc., 586 So. 2d 163 (Miss. 1991).

Claimant has burden of proving that he sustained an accidental injury arising out of and in the course and scope of his employment, and that the injury caused the disability for which he is claiming benefits. Sonford Prods. Corp. v. Freels, 495 So. 2d 468 (Miss. 1986), overruled on other grounds, Bickham v. Department of Mental Health, 592 So. 2d 96 (Miss. 1991).

The Workers' Compensation Commission's findings that a truck driver sustained a compensable injury and that the repeated trauma of his work aggravated a pre-existing non-work-related condition were supported by substantial evidence where the worker's treating physician and the physician for the employer who conducted a physical examination required by the Department of Transportation had released the worker to return to work following treatment for a non-work-related back injury and the treating physician testified that the worker had a "chronically sore joint in the back that was apparently being aggravated by the nature of his work as a long-distance truck driver." Miller Transporters, Inc. v. Guthrie, 554 So. 2d 917 (Miss. 1989).

Worker's Compensation Commission's finding that claimant had suffered a work-related injury, and was occupationally disabled as a result thereof, was sustained by medical and lay evidence. Delta Drilling Co. v. Cannette, 489 So. 2d 1378 (Miss. 1986).

Disability determination must be supported by medical evidence. Delta Drilling Co. v. Cannette, 489 So. 2d 1378 (Miss. 1986).

Though disability and extent thereof must be supported by medical findings, compensation may be allowed for disabling pain in absence of positive medical testimony and objective medical findings as to any physical cause. Penrod Drilling Co. v. Etheridge, 487 So. 2d 1330 (Miss. 1986).

Testimony of claimant's physician giving opinion to reasonable medical certainty that claimant has experienced injury resulting in claimant being 100 percent disabled is sufficient to support finding of disability, notwithstanding contradictory testimony by employer's physician, where claimant's physician has examined and treated claimant on 9 or 10 occasions and employer's physician has examined claimant on only one occasion, some 10 months after most recent examination by claimant's physician. South

Cent. Bell Tel. Co. v. Aden, 474 So. 2d 584 (Miss. 1985).

Medical testimony that a claimant's duties as a meat cutter, which required him to spend 65 per cent of his time lifting and carrying heavy food products, probably aggravated a non-work originating disease contracted by the claimant, warranted a determination that the disease constituted an accidental injury within the meaning of the Workmen's Compensation Law and supported an award of benefits. Kroger Co. v. Orr, 230 So. 2d 798 (Miss. 1970).

Finding of disability as the result of a fall held supported by substantial evidence. Forest Constructors, Inc. v. Tadlock, 248 Miss. 460, 160 So. 2d 214 (1964).

Evidence of lay witnesses as to extent of disability held to support award, notwithstanding medical evidence of less disability. McManus v. Southern United Ice Co., 243 Miss. 576, 138 So. 2d 899 (1962).

That workmen's compensation claimant had represented to disability insurer that his injury was not covered by workmen's compensation, while not conclusive, is a circumstance to be considered. Parker v. United Gas Corp., 240 Miss. 351, 127 So. 2d 438 (1961).

In order to have a compensable claim, it was not necessary for the claimants to show that the deceased had a pre-existing heart condition or other physical infirmity which could have been aggravated by the work of the deceased. Pennington v. Smith, 232 Miss. 775, 100 So. 2d 569 (1958).

31. Going and coming rule.

Where an employee, a truck driver, was struck by a drunk driver while driving home in a personal vehicle to take a shower between deliveries, although the employee was not a traveling employee at the time of the accident, the employee met an exception to the "going and coming" rule by performing an employment duty while at home because, inter alia, (1) the employee followed the direction of the employer and attempted to save the company money by taking a shower at home, and (2) while the employee was on a delivery route, the employee was normally paid for the time the employee took a shower and reimbursed for the costs of the showers. Lane v. Hartson-Kennedy Cabinet Top Co., 981 So. 2d 1063 (Miss. Ct. App. 2008).

ATTORNEY GENERAL OPINIONS

A person performing work as part of his sentence for a criminal conviction is not an "employee" according to this definition as there is no "contract of hire". Donald, Nov. 20, 1991, A.G. Op. #91-0866.

Juror does not serve under "any contract of hire or apprenticeship" under Miss. Code Section 71-3-3(d); juror is required to perform jury duty by law and not by any contract with state or county; therefore, jurors are not covered by Workers' Compensation Act. Trapp, Mar. 12, 1993, A.G. Op. #93-0133.

Pursuant to Section 71-3-3(d), individuals serving as members on a board and receiving travel expenses and per diem are simply being reimbursed for their expenses and are not receiving compensation for their services to that board. Thus, those individuals are not considered employees for purposes of workers' compensation. Ranck, October 13, 1995, A.G. Op. #95-0691.

Even though individuals are elected rather than hired under a contract of employment, elected officials receive a salary and perform official duties on behalf of the municipality, and this being the case, are to be considered "employees" of the municipality for purposes of workers' compensation coverage. Tullos, Dec. 19, 2003, A.G. Op. 03-0580.

In the absence of any compensation, volunteer firemen are not "employees" of the municipality, and would not be entitled to workers' compensation coverage. However, whether the volunteer is compensated by the municipality should not be the sole consideration, and the situation in each municipality should be reviewed independently. Tullos, Dec. 19, 2003, A.G. Op. 03-0580.

A contract worker who falls within the statutory definition of "employee", as provided in Section 71-3-3, would be considered an employee for purposes of workers' compensation coverage. Walker, Nov. 10, 2006, A.G. Op. 06-0563.

RESEARCH REFERENCES

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§ 71-3-5. Application.

The following shall constitute employers subject to the provisions of this chapter:

Every person, firm and private corporation, including any public service corporation but excluding, however, all nonprofit charitable, fraternal, cultural, or religious corporations or associations, that have in service five (5) or more workmen or operatives regularly in the same business or in or about the same establishment under any contract of hire, express or implied.

Any state agency, state institution, state department, or subdivision thereof, including counties, municipalities and school districts, or the singular thereof, not heretofore included under the Workers' Compensation Law, may elect, by proper action of its officers or department head, to come within its provisions and, in such case, shall notify the commission of such action by filing notice of compensation insurance with the commission. Payment for compensation insurance policies so taken may be made from any appropriation or funds available to such agency, department or subdivision thereof, or from the general fund of any county or municipality.

From and after July 1, 1990, all offices, departments, agencies, bureaus, commissions, boards, institutions, hospitals, colleges, universities, airport authorities or other instrumentalities of the "state" as such term is defined in Section 11-46-1, Mississippi Code of 1972, shall come under the provisions of the Workers' Compensation Law. Payment for compensation insurance policies so taken may be made from any appropriation or funds available to such office, department, agency, bureau, commission, board, institution, hospital, college, university, airport authority or other instrumentality of the state.

From and after October 1, 1990, counties and municipalities shall come under the provisions of the Workers' Compensation Law. Payment for compensation insurance policies so taken may be made from any funds available to such counties and municipalities.

From and after October 1, 1993, all "political subdivisions," as such term is defined in Section 11-46-1, Mississippi Code of 1972, except counties and municipalities shall come under the provisions of the Workers' Compensation Law. Payment for compensation insurance policies so taken may be made from any funds available to such political subdivisions.

From and after July 1, 1988, the "state" as such term is defined in Section 11-46-1, Mississippi Code of 1972, may elect to become a self-insurer under the provisions elsewhere set out by law, by notifying the commission of its intent to become a self-insurer. The cost of being such a self-insurer, as provided otherwise by law, may be paid from funds available to the offices, departments, agencies, bureaus, commissions, boards, institutions, hospitals, colleges, universities, airport authorities or other instrumentalities of the state.

The Mississippi Transportation Commission, the Department of Public Safety and the Mississippi Industries for the Blind may elect to become self-insurers under the provisions elsewhere set out by law by notifying the commission of their intention of becoming such a self-insurer. The cost of being such a self-insurer, as provided elsewhere by law, may be paid from funds available to the Mississippi Transportation Commission, the Department of Public Safety or the Mississippi Industries for the Blind.

The Mississippi State Senate and the Mississippi House of Representatives may elect to become self-insurers under provisions elsewhere set out by law by notifying the commission of their intention of becoming such self-insurers. The cost of being such self-insurers, as provided elsewhere by law, may be paid from funds available to the Mississippi State Senate and the Mississippi House of Representatives. The Mississippi State Senate and the Mississippi House of Representatives are authorized and empowered to provide workers' compensation benefits for employees after January 1, 1970.

Any municipality of the State of Mississippi having forty thousand (40,000) population or more desiring to do so may elect to become a self-insurer under provisions elsewhere set out by law by notifying the commission of its intention of becoming such an insurer. The cost of being such a self-insurer, as provided elsewhere by law, may be provided from any funds available to such municipality.

The commission may, under such rules and regulations as it prescribes, permit two (2) or more "political subdivisions," as such term is defined in

Section 11-46-1, Mississippi Code of 1972, to pool their liabilities to participate in a group workers' compensation self-insurance program. The governing authorities of any political subdivision may authorize the organization and operation of, or the participation in such a group self-insurance program with other political subdivisions, provided such program is approved by the commission. The cost of participating in a group self-insurance program may be provided from any funds available to a political subdivision.

Domestic servants, farmers and farm labor are not included under the provisions of this chapter, but this exemption does not apply to the processing of agricultural products when carried on commercially. Any purchaser of timber products shall not be liable for workers' compensation for any person who harvests and delivers timber to such purchaser if such purchaser is not liable for unemployment tax on the person harvesting and delivering the timber as provided by United States Code Annotated, Title 26, Section 3306, as amended. Provided, however, nothing in this section shall be construed to exempt an employer who would otherwise be covered under this section from providing workers' compensation coverage on those employees for whom he is liable for unemployment tax.

Employers exempted by this section may assume, with respect to any employee or classification of employees, the liability for compensation imposed upon employers by this chapter with respect to employees within the coverage of this chapter. The purchase and acceptance by such employer of valid workers' compensation insurance applicable to such employee or classification of employees shall constitute, as to such employer, an assumption by him of such liability under this chapter without any further act on his part notwithstanding any other provisions of this chapter, but only with respect to such employee or such classification of employees as are within the coverage of the state fund. Such assumption of liability shall take effect and continue from the effective date of such workers' compensation insurance and as long only as such coverage shall remain in force, in which case the employer shall be subject with respect to such employee or classification of employees to no other liability than the compensation as provided for in this chapter.

An owner/operator, and his drivers, must provide a certificate of insurance of workers' compensation coverage to the motor carrier or proof of coverage under a self-insured plan or an occupational accident policy. Any such occupational accident policy shall provide a minimum of One Million Dollars ($1,000,000.00) of coverage. Should the owner/operator fail to provide written proof of coverage to the motor carrier, then the owner/operator, and his drivers, shall be covered under the motor carrier's workers' compensation insurance program and the motor carrier is authorized to collect payment of the premium from the owner/operator. In the event that coverage is obtained by the owner/operator under a workers' compensation policy or through a self-insured or occupational accident policy, then the owner/operator, and his drivers, shall not be entitled to benefits under the motor carrier's workers' compensation insurance program unless the owner/operator has elected in writing to be covered under the carrier's workers' compensation program or policy or if the owner/operator is covered by the carrier's plan because he failed to obtain coverage. Coverage under the motor carrier's workers' compensation insurance program does not terminate the independent contractor status of the owner/ operator under the written contract or lease agreement. Nothing shall prohibit or prevent an owner/operator from having or securing an occupational accident policy in addition to any workers' compensation coverage authorized by this section. Other than the amendments to this section by Chapter 523, Laws of 2006, the provisions of this section shall not be construed to have any effect on any other provision of law, judicial decision or any applicable common law.

This chapter shall not apply to transportation and maritime employments for which a rule of liability is provided by the laws of the United States.

This chapter shall not be applicable to a mere direct buyer-seller or vendor-vendee relationship where there is no employer-employee relationship as defined by Section 71-3-3, and any insurance carrier is hereby prohibited from charging a premium for any person who is a seller or vendor rather than an employee.

Any employer may elect, by proper and written action of its own governing authority, to be exempt from the provisions of the Workers' Compensation Law as to its sole proprietor, its partner in a partnership or to its employee who is the owner of fifteen percent (15%) or more of its stock in a corporation, if such sole proprietor, partner or employee also voluntarily agrees thereto in writing. Any sole proprietor, partner or employee owning fifteen percent (15%) or more of the stock of his/her corporate employer who becomes exempt from coverage under the Workers' Compensation Law shall be excluded from the total number of workers or operatives toward reaching the mandatory coverage threshold level of five (5).

SOURCES: Codes, 1942, § 6998-03; Laws, 1948, ch. 354, § 3; Laws, 1950, ch. 412, § 2; Laws, 1960, ch. 438; Laws, 1963, 1st Ex. Sess. ch. 36; Laws, 1964, ch. 443; Laws, 1968, ch. 478, § 1; Laws, 1970, ch. 454, § 1; ch. 455, § 1; Laws, 1972, ch. 522, § 1; Laws, 1981, ch. 416, § 1; reenacted, Laws, 1982, ch. 473, § 3; Laws, 1983, ch. 422, § 7; Laws, 1987, ch. 483, § 13; Laws, 1988, ch. 442, § 10; Laws, 1988, ch. 479, § 6; Laws, 1989, ch. 537, § 9; reenacted without change, Laws, 1990, ch. 405, § 3; reenacted and amended, Laws, 1990, ch. 518, § 10; Laws, 1991, ch. 618, § 45; Laws, 1992, ch. 491 § 47; Laws, 1992, ch. 577 § 1; Laws, 1992 Special Session, ch. 3, § 4; Laws, 2006, ch. 523, § 1, eff from and after passage (approved Apr. 3, 2006.)

Cross References — Offset of workers' compensation against disability retirement benefits of public employees, see § 25-11-113.

Election of National Guard to come within provisions of Workers' Compensation Law, see § 33-1-29.

Workers' compensation coverage for civilian defense personnel, see §§ 33-15-15, 33-15-21.

Mississippi Industries for the Blind, see §§ 43-3-101 et seq.

Department of Public Safety generally, see §§ 45-1-1 et seq.

Workers' compensation coverage for patrolmen and other public safety department personnel, see § 45-1-15.

Workers' compensation coverage for guards and other state penitentiary personnel, see § 47-5-43.

Workers' compensation coverage for port commission employees, see § 59-7-205.

Exclusion of workers' compensation coverage from motor vehicle liability policy, see § 63-15-43.

Mississippi Transportation Commission, see § 65-1-3.

Establishment of special workers' compensation account for payment of compensation, see § 71-3-38.

Exception of workers' compensation coverage from health and accident insurance laws, see § 83-9-17.

Workers' compensation coverage for condominium owners, see § 89-9-17.

JUDICIAL DECISIONS

1. In general.
2. Standard of proof.
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4. Exemptions.
5. —Farmers and farm labor.
6. —Maritime employment.
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1. In general.

Self-insured employer was bound by statement in employee handbook provided to every employee that employees would be covered for what would in effect be compensable injury under Workers' Compensation Act. Southwest Miss. Regional Medical Ctr. v. Lawrence, 684 So. 2d 1257 (Miss. 1996).

Employee proved by preponderance of evidence that his employer did not carry workers' compensation, as required for every employer with five or more employees. James M. Burns Lumber Co. v. Dilworth, 676 So. 2d 892 (Miss. 1996).

Where an employee was in the course and scope of his employment with both Mississippi and Louisiana employers at the time of his death, a settlement from the Louisiana employers in Louisiana workmen's compensation proceedings did not bar a claim for death benefits against the Mississippi employer-carrier in Mississippi, but the Mississippi employer-carrier was entitled to credit for the amount paid by the Louisiana employers. Dependents of Roberts v. Holiday Parks, Inc., 260 So. 2d 476 (Miss. 1972).

The Mississippi Workmen's Compensation Law was adopted in the exercise of the state's police power to provide for the welfare of its citizens and others performing labor within its borders, and the state has a legitimate interest in imposing a rule of compensation liability where the injury occurs in that state. Nowlin v. Lee, 203 So. 2d 493 (Miss. 1967).

The relation of employer and employee is not invalidated because the contract under which the employer is proceeding may be an improvident one. Virden Lumber Co. v. Price, 223 Miss. 336, 78 So. 2d 157 (1955).

The requirement that the employer must secure payment of compensation means that he must have in effect an insurance policy complying with the Workmen's Compensation Law, or must qualify as self-insurer. McCoy v. Cornish, 220 Miss. 577, 71 So. 2d 304 (1954).

2. Standard of proof.

In a case where it was decided that two owners should have procured workers' compensation insurance for a logging business, the preponderance of the evidence standard was properly used in making this determination under Miss. Code Ann. § 71-3-5, rather than the clear and convincing proof standard in Miss. Code Ann. § 71-3-83. White v. Jordan, 11 So. 3d 755 (Miss. Ct. App. 2008), writ of certiorari denied by 12 So. 3d 531, 2009 Miss. LEXIS 289 (Miss. 2009), writ of certiorari denied by 2009 Miss. LEXIS 297 (Miss. June 25, 2009).

3. Number of employees.

Where decedent was killed while hauling logs for a subcontractor, the subcontractor, a trucking company, was qualified as an employer because it had five or more workmen or operatives under any contract of hire; therefore, the subcontractor had an obligation to secure compensation for its employees, which it did by having the contracting deduct premiums from the contractor's payments to the subcontractor. Lamar v. Thomas Fowler Trucking, Inc., 956 So. 2d 878 (Miss. 2007).

In the absence of any statutory provision for omission of out-of-state employees of the same employer in the count for the purpose of determining the minimum number of employees, out-of-state employees should be counted for the purpose of making such a determination. Nowlin v. Lee, 203 So. 2d 493 (Miss. 1967).

Where the employer was engaged in the business of developing real estate in both Tennessee and Mississippi and his employees in Tennessee and Mississippi were all employees of the same establishment and were paid out of the same bank account, it was proper to add the number of his Tennessee employees to those working for him in Mississippi to determine whether he had the statutory minimum of eight employees. Nowlin v. Lee, 203 So. 2d 493 (Miss. 1967).

Under evidence showing that, among other things, the work performed by three commissioned salesmen, who drove their own automobiles, constituted an integral part of the business of a partnership selling sewing machines, the partnership controlled the maximum price of the machines, could accept or reject any deferred payment contracts, required the salesmen to service the machines sold, could fire any of the salesmen at will, and the salesmen turned over to the partnership all funds collected, the attorney-referee and the commission did not err in finding that the commission salesmen were employees and not independent contractors, so that the partnership, which employed five additional persons, was an employer subject to the provisions of the Workmen's Compensation Law. Kahne v. Robinson, 232 Miss. 670, 100 So. 2d 132 (1958).

If by the character of the work the employer has once regularly employed eight or more persons, he remains under the Workmen's Compensation Law even when the number employed temporarily falls below the minimum, and it is not necessary that the minimum number of workers shall be employed on the same job or at the same place. Mosley v. Jones, 224 Miss. 725, 80 So. 2d 819 (1955).

The Workmen's Compensation Law does not deny equal protection of the laws because it excludes employees of persons, firms, and corporations having in service less than eight workmen. Walters v. Blackledge, 220 Miss. 485, 71 So. 2d 433 (Miss. 1954).

The question whether the number of men employed is such as to bring the employer within the Workmen's Compensation Law is to be determined by the character of the work in which the men are employed, however brief or long, and not by the character of the employment whether regular, casual, occasional, periodical, or otherwise, so long as they were hired to do the work in common or unusual business of the employer. Jackson v. Fly, 215 Miss. 303, 60 So. 2d 782 (1952), corrected, 215 Miss. 303, 63 So. 2d 536 (1952).

4. Exemptions.

If exemptions are to be surrendered, the intention of the exemptionist to do so must be reasonably clear and certain. Eaton v. Joe N. Miles & Sons, 238 Miss. 605, 119 So. 2d 359 (1960).

5. —Farmers and farm labor.

Employer was in the business of processing oyster meat, rather than farming, and, therefore, an employee was not exempted from the act where the employer removed oysters from their shells, washed them, and packed them. Bradford Seafood Co. v. Alexander, 785 So. 2d 321 (Miss. Ct. App. 2001).

A claimant who did not engage in agricultural pursuits of any nature whatsoever and whose sole activity was that of clearing land, using a bulldozer for this purpose and performing mechanical work on the machine, was not a "farm laborer" within the exemption provided by this section [Code 1942, § 6998-03]. Nowlin v. Lee, 203 So. 2d 493 (Miss. 1967).

A partnership did not lose its right to exemption by merely taking out workmen's compensation insurance to cover their farm laborers at time of purchase of the farm, where there was no compliance with the statutory requirement as to the posting of notices on the premises, and notification was not given to the workmen's compensation commission of their election to come under the Workmen's Compensation Law, and the claimant was not led to believe that he would receive workmen's compensation benefit if injured in the course of his employment. Eaton v. Joe N. Miles & Sons, 238 Miss. 605, 119 So. 2d 359 (1960).

A claimant who was injured while combining seed on employer's farm was doing farm labor at the time of his injury and was not engaged in commercial processing of agricultural products. Eaton v. Joe N. Miles & Sons, 238 Miss. 605, 119 So. 2d 359 (1960).

Death of a sharecropper and farm laborer resulting from his being thrown from and run over by the landowner's tractor and trailer while hauling his own cotton from the field to the landowner's gin arose out of and in the course of his farming activities, so that his widow and dependent could not recover death benefits under the Workmen's Compensation Law. Wilkins v. Wood, 229 Miss. 553, 91 So. 2d 560 (1956).

6. —Maritime employment.

In an action against a general contractor and a subcontractor arising from the death of an iron worker while constructing a casino on a barge on a navigable waterway, the general contractor was not entitled to immunity as the decedent's statutory employer because the decedent was covered by the federal Longshore and Harbor Workers' Compensation Act at the time of his death. Accu-Fab & Constr., Inc. v. Ladner by & Through Ladner, 970 So. 2d 1276 (Miss. Ct. App. 2000), aff'd, 778 So. 2d 766 (2001).

The general contractor and a subcontractor involved in the construction of a barge casino located on a navigable waterway were not entitled to statutory immunity under Workers' Compensation Act with regard to injuries sustained by an employee of another subcontractor; that employee was covered under the Longshore and Harbor Workers' Compensation Act at the time of his injury. Accu-Fab & Constr., Inc. v. Ladner by & Through Ladner, — So. 2d —, 1999 Miss. App. LEXIS 452 (Miss. Ct. App. June 29, 1999), opinion withdrawn by, substituted opinion at 970 So. 2d 1276, 2000 Miss. App. LEXIS 111 (Miss. Ct. App. 2000).

The state compensation law does not apply to a pilot on board a tug-boat operating in interstate commerce upon navigable waters of the United States while tied up to await the unloading of its barges. Valley Towing Co. v. Allen, 236 Miss. 51, 109 So. 2d 538 (1959).

The state compensation law is not applicable to injuries sustained by persons employed under maritime contracts, where the particular employment is of a maritime nature and where the injury occurs on waters within admiralty jurisdiction, except in case of matters of local concern the regulation of which by the state will work no material prejudice to the characteristic features of maritime law or interfere with its proper harmony or uniformity in its international or interstate relations. Valley Towing Co. v. Allen, 236 Miss. 51, 109 So. 2d 538 (1959).

7. —Governmental entities and agencies.

Statute exempting state employees from mandatory workmen's compensation coverage, Miss Code § 71-3-5, did not violate equal protection rights of school employee who was injured in truck accident because statute had rational basis; schools and school systems had limited financial resources whereas private industries could incorporate cost factor of insurance into product. Adams v. Petal Mun. Separate Sch. Sys., 487 So. 2d 1329 (Miss. 1986).

The exemption of school districts from mandatory worker's compensation coverage has rational basis, and does not impinge upon the equal protection rights of injured school district employees. Adams v. Petal Mun. Separate Sch. Sys., 487 So. 2d 1329 (Miss. 1986).

Community hospital and nursing home is agency of state excluded from statutory requirement that workmen's compensation coverage be obtained for employees, without regard to whether it is performing proprietary, as opposed to governmental, function. Parrott v. Winston County Community Hosp. & Nursing Home, 464 So. 2d 1159 (Miss. 1985).

8. —Other exclusions.

Lumber company was properly dismissed as a party in a workers' compensation case because there was no evidence offered of the existence of an employer-employee relationship between the lumber company or any of the employees of a logging business; moreover, there was no evidence that the lumber company paid the employees of the logging business or that lumber company exercised any control over the employees of the logging business. As such, the lumber company was exempt from the requirements of the workers' compensation laws under Miss. Code Ann. § 71-3-5. White v. Jordan, 11 So. 3d 755 (Miss. Ct. App. 2008), writ of certiorari denied by 12 So. 3d 531, 2009 Miss. LEXIS 289 (Miss. 2009), writ of certiorari denied by 2009 Miss. LEXIS 297 (Miss. June 25, 2009).

A painters' and decorators' association was held excluded by this provision. Davis v. Painting & Decorating Contractors of Am., 240 Miss. 394, 126 So. 2d 876 (1961).

9. Liability for coverage.

In a case where two owners of a logging business should have procured workers' compensation insurance for a logging business, it was irrelevant to the responsibility of the owners and the business that two injured employees had received benefits from an insurance policy that did not cover workers' compensation claims. White v. Jordan, 11 So. 3d 755 (Miss. Ct. App. 2008), writ of certiorari denied by 12 So. 3d 531, 2009 Miss. LEXIS 289 (Miss. 2009), writ of certiorari denied by 2009 Miss. LEXIS 297 (Miss. June 25, 2009).

Miss. Code Ann. § 71-3-5 does not set any timetable for procuring workers' compensation insurance, it merely gives the coverage criteria; however, given the beneficent purpose of the Mississippi Workers' Compensation Act, it should be readily apparent to any business owner that workers' compensation insurance is necessary as soon as the business meets the statutory definition of a covered employer. Therefore, two business owners were not held to a higher standard than other businesses when it was determined that they should have procured workers' compensation insurance before an accident occurred. White v. Jordan, 11 So. 3d 755 (Miss. Ct. App. 2008), writ of certiorari denied by 12 So. 3d 531, 2009 Miss. LEXIS 289 (Miss. 2009), writ of certiorari denied by 2009 Miss. LEXIS 297 (Miss. June 25, 2009).

Where the evidence showed that two employees had worked for a spouse's logging business previously and they had worked with a second business for a few weeks before an accident, the employees were regularly employed by a second business and brought it within the definition of a covered employer under Miss. Code Ann. § 71-3-5. White v. Jordan, 11 So. 3d 755 (Miss. Ct. App. 2008), writ of certiorari denied by 12 So. 3d 531, 2009 Miss. LEXIS 289 (Miss. 2009), writ of certiorari denied by 2009 Miss. LEXIS 297 (Miss. June 25, 2009).

The owner of two pulpwood business corporations who contracted with a construction firm to build his residence, terminated that contract, and subsequently contracted for the services of more than five of the firm's workmen to finish the house, came within the purview of the Workmen's Compensation Law; a workman who was injured during construction was therefore entitled to recover from an insurance policy issued to the owner of the house personally to cover his pulpwood corporations under the Workmen's Compensation Law. Colonial Life & Accident Ins. Co. v. Bookout, 346 So. 2d 898 (Miss. 1976).

Injuries sustained by one serving city in various capacities, who also acted as city marshal, while returning from investigating a bomb scare, held to have been while performing duties of an undercovered elected office. Floyd v. City of Drew, 241 Miss. 217, 129 So. 2d 340 (1961).

Employee of seller of logs to mill-owner is not entitled to compensation from mill-owner for broken leg sustained while delivering them at the mill. Taylor v. Beasley, 237 Miss. 291, 114 So. 2d 775 (1959).

Where a newspaper employer, furnishing newspapers to newsboy, had the power to fire the newsboy at will and to fix the price of the newspaper to the carrier and to the customer, and had control of the entire route over which the carrier was permitted to work, their relationship was one of employer and employee making the carrier boy eligible for workmen's compensation. Laurel Daily Leader, Inc. v. James, 224 Miss. 654, 80 So. 2d 770 (1955), but see Webster v. Mississippi Publishers Corp., 1989 Miss. Lexis 519 (Miss. Dec. 20, 1989).

Prior to the 1956 amendment, where the claimant was a working partner of a firm and had not obtained compensation coverage by compliance with the provisions of the Workmen's Compensation Law, his injury was not compensable. American Sur. Co. v. Cooper, 222 Miss. 429, 76 So. 2d 254 (1954).

Where an employee was carrying workmen's compensation for his employees and reported accident to his insurance carrier, the injured employee was precluded from an action based upon alleged common-law negligence, even though the injured employee was not named in the workmen's compensation policy. Nowell v. Harris, 219 Miss. 363, 68 So. 2d 464 (1953).

Where a subcontractor had in service eight or more workmen regularly in his business and has failed to secure the payment of compensation for his employees, the primary contractor is not liable for the benefits for injuries sustained by employee on a job other than that of the primary contractor. Jackson v. Fly, 215 Miss. 303, 60 So. 2d 782 (1952), corrected, 215 Miss. 303, 63 So. 2d 536 (1952).

10. Review.

Standard of review in workers' compensation cases is limited and substantial evidence test is used. Inman v. Coca-Cola/Dr. Pepper Bottling Co., 678 So. 2d 992 (Miss. 1996).

Workers' Compensation Commission is trier and finder of facts in compensation claim; Supreme Court will reverse Commission's order only if it finds that order clearly erroneous and contrary to overwhelming weight of evidence. Inman v. Coca-Cola/Dr. Pepper Bottling Co., 678 So. 2d 992 (Miss. 1996).

In reversing the Commission's fact-finding, reviewing courts are advised to provided detailed, written support for their conclusions. R.C. Petro., Inc. v. Hernandez, 555 So. 2d 1017 (Miss. 1990).

An error in fixing the amount allowed for disability cannot be asserted for the first time on suggestion of error. Rigdon v. General Box Co., 249 Miss. 239, 162 So. 2d 863 (1964).

ATTORNEY GENERAL OPINIONS

There is no authority for a school district to apply for self-insured status on its own, but a school district may organize and participate in a self-insurance program approved by the commission in cooperation with another political subdivision. Arledge, Oct. 6, 2000, A.G. Op. #2000-0558.

A school district has the authority to participate in the Mississippi Municipal Workers' Compensation Group, a liability pool created for participation by various political subdivisions, as long as it was created pursuant to this section. Seal, Aug. 29, 2003, A.G. Op. 03-0415.

RESEARCH REFERENCES

ALR. Workers' compensation: attorney's fee or other expenses of litigation incurred by employee in action against third party tortfeasor as charge against employer's distributive share. 74 A.L.R.3d 854.

Workers' compensation: effect of allegation that injury was caused by, or occurred during course of, worker's illegal conduct. 73 A.L.R.4th 270.

Applicability under 29 CFR 1918.2 of Safety and Health Regulations for Longshoring to actions against shipowners pursuant to 33 USCS § 905(b) of the Longshoremen's and Harbor Workers' Compensation Act amendment of 1972. 56 A.L.R. Fed. 812.

Am Jur. 82 Am. Jur. 2d, Workers' Compensation §§ 83 et seq.

17 Am. Jur. Pl & Pr Forms (Rev), Master and Servant, Forms 211 et seq. (liability of employer for injuries to employee).

26 Am. Jur. Trials 645, Workmen's Compensation—Employment Party Injury Litigation.

CJS. 99 C.J.S., Workers' Compensation §§ 114 et seq.

Law Reviews. Steiner, The Americans with Disabilities Act of 1990 and workers' compensation: the employees' perspective. 62 Miss. L. J. 631 (Spring, 1993).

Practice References. Bender's Labor and Employment Bulletin. (Matthew Bender).

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§ 71-3-7. Liability for payment of compensation.

Compensation shall be payable for disability or death of an employee from injury or occupational disease arising out of and in the course of employment, without regard to fault as to the cause of the injury or occupational disease. An occupational disease shall be deemed to arise out of and in the course of employment when there is evidence that there is a direct causal connection between the work performed and the occupational disease.

Where a preexisting physical handicap, disease, or lesion is shown by medical findings to be a material contributing factor in the results following injury, the compensation which, but for this paragraph, would be payable shall be reduced by that proportion which such preexisting physical handicap, disease, or lesion contributed to the production of the results following the injury.

(a) Apportionment shall not be applied until the claimant has reached maximum medical recovery.

(b) The employer or carrier does not have the power to determine the date of maximum medical recovery or percentage of apportionment. This must be done by the attorney-referee, subject to review by the commission as the ultimate finder of fact.

(c) After the date the claimant reaches maximum medical recovery, weekly compensation benefits and maximum recovery shall be reduced by that proportion which the preexisting physical handicap, disease, or lesion contributes to the results following injury.

(d) If maximum medical recovery has occurred before the hearing and order of the attorney-referee, credit for excess payments shall be allowed in future payments. Such allowances and method of accomplishment of the same shall be determined by the attorney-referee, subject to review by the commission. However, no actual repayment of such excess shall be made to the employer or carrier.

No compensation shall be payable if the intoxication of the employee was the proximate cause of the injury, or if it was the willful intention of the employee to injure or kill himself or another.

Every employer to whom this chapter applies shall be liable for and shall secure the payment to his employees of the compensation payable under its provisions.

In the case of an employer who is a subcontractor, the contractor shall be liable for and shall secure the payment of such compensation to employees of the subcontractor, unless the subcontractor has secured such payment.

SOURCES: Codes, 1942, § 6998-04; Laws, 1948, ch. 354, § 4; Laws, 1950, ch. 412, § 3; Laws, 1958, ch. 454, § 1; Laws, 1960, ch. 277; Laws, 1968, ch. 559, § 3; reenacted without change, Laws, 1982, ch. 473, § 4; reenacted without change, Laws, 1990, ch. 405, § 4, eff from and after July 1, 1990.

Cross References — Admissibility of employer-administered drug or alcohol test results to determine intoxication of employee at time of allegedly compensable injury, see § 71-3-121.

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1. In general.

A post-injury termination for misconduct, even if the misconduct contributed to the injury, does not end the right to benefits. Tyson Foods, Inc. v. Hilliard, 772 So. 2d 1103 (Miss. Ct. App. 2000).

The Workers' Compensation Commission, within legal limits, is the sole judge of the weight and sufficiency of the evidence. Evidence which is not contradicted by positive testimony or circumstances, and which is not inherently improbable, incredible, or unreasonable, cannot, as a matter of law, be arbitrarily or capriciously discredited, disregarded or rejected, even though the witness is a party or is interested; unless uncontradicted evidence is shown to be untrustworthy, it is to be taken as conclusive and binding on the triers of fact. Morris v. Lansdell's Frame Co., 547 So. 2d 782 (Miss. 1989).

If maximum medical recovery has occurred before the attorney-referee's hearing and order, credit for any excess payments by the employer and carrier shall be allowed in future payments; and such allowances and the method for crediting excess payments against future payments shall be determined by the attorney-referee, subject to review. Cockrell Banana Co. v. Harris, 212 So. 2d 581 (Miss. 1968).

Until maximum medical recovery has been reached the claimant is entitled to full temporary total disability payments unless such disability was total and permanent on the date of injury. Cockrell Banana Co. v. Harris, 212 So. 2d 581 (Miss. 1968).

A claim for disability under the compensation law is not a suit to recover damages growing out of an industrial injury, but is compensation for loss of earnings as a result of an industrial injury, or the loss to the dependents of a worker because of his death. Thyer Mfg. Co. v. Mooney, 252 Miss. 629, 173 So. 2d 652 (1965).

This section [Code 1942, § 6998-04] is constitutional. Southeastern Constr. Co. v. Dodson's Dependent, 247 Miss. 1, 153 So. 2d 276 (1963).

The propriety and fairness of this section [Code 1942, § 6998-04] is not a judicial question. Southeastern Constr. Co. v. Dodson's Dependent, 247 Miss. 1, 153 So. 2d 276 (1963).

A workmen's compensation policy covered the employees of insured and the fact that a worker was not named in the policy is immaterial. Nowell v. Harris, 219 Miss. 363, 68 So. 2d 464 (1953).

In an action against shipper by rail for personal injuries sustained because of alleged improper manner in loading a flatcar, by an employee of consignee, neither the consignee nor its insurance carrier, who were alleged to be paying the employee workmen's compensation benefits and who received notice of the action, were necessary parties to the action. American Creosote Works v. Harp, 215 Miss. 5, 60 So. 2d 514, 35 A.L.R.2d 603 (1952).

2. Liability for payment.

There is no support in the Mississippi Workers' Compensation Act, or in the case law, for the proposition that an employer which itself is free of any wrongdoing can be held liable on an alter-ego theory for its workers' compensation carrier's bad faith failure to pay benefits; the law, in fact, is to the contrary. Toney v. Lowery Woodyards, 278 F. Supp. 2d 786 (S.D. Miss. 2003).

An employers' liability under the Workmen's Compensation Law is not affected by his failure to obtain insurance. Dawson's Dependents v. Delta W. Exploration Co., 245 Miss. 335, 147 So. 2d 485 (1962).

Liability for compensation is on the insurer at the time of injury rather than the insurer at the time of resulting disability. Potts v. Lowery, 242 Miss. 300, 134 So. 2d 474 (1961).

The act of the employer's manager in telling claimant that she was under the compensation law and furnishing her with blank forms of claim, does not obligate the employer to pay compensation to one whose claim is not compensable. Ray v. Wells-Lamont Glove Factory, 236 Miss. 154, 109 So. 2d 544 (1959).

3. — Bad faith denial of benefits.

Employee's claim that her former employer acted in bad faith in denying workers' compensation benefits under Miss. Code Ann. § 71-3-7, which benefits the employee later received via a settlement, failed because the employer had arguable reasons for its decision where an investigation into whether the employee's alleged sexual relationship with her manager ever occurred or was the cause of the employee's mental health problems was inconclusive. Hood v. Sears Roebuck & Co., 532 F. Supp. 2d 795 (S.D. Miss. June 23, 2005), affirmed by 247 Fed. Appx. 531, 2007 U.S. App. LEXIS 21978 (5th Cir. Miss. 2007).

4. Insurance carriers.

An employer and its carrier were not entitled to credit for excess payments with regard to payment, pursuant to company policy, of regular salary as sick pay for 90 working days. Pet, Inc. v. Roberson, 329 So. 2d 516 (Miss. 1976).

The Workmen's Compensation Law does not provide for contribution between insurance carriers, and the apportionment provisions of this section [Code 1942, § 6998-04] refer only to the amount of compensation to which the injured employee will be entitled, not to how the payments of the compensation will be apportioned among those liable. Thyer Mfg. Co. v. Mooney, 252 Miss. 629, 173 So. 2d 652 (1965).

5. Salary, sick pay or vacation pay as affecting payment.

Although a claimant is not entitled to compensation when he or she receives his or her regular salary in lieu of compensation, sick pay, vacation pay, donations or gratuities are not salary in lieu of compensation; thus, a claimant should have been awarded benefits during the time he was on vacation and receiving vacation pay where he was totally disabled at the time he took his vacation leave. Lanterman v. Roadway Express, Inc., 608 So. 2d 1340 (Miss. 1992).

6. Pain.

Compensation may be allowed for disabling pain in the absence of positive medical testimony as to any physical cause whatever. When the patient complains of pain, the doctor usually takes the fact of pain for granted and the absence of physical findings to account for the pain will not necessarily bar compensation. In such cases, evidence of an accident followed by disabling pain and the absence of evidence as to the cause of the pain from objective medical findings may be sufficient as a basis for compensation, in the absence of circumstances tending to show malingering or indicating that the claimant's testimony as to pain is inherently improbable, incredible, unreasonable or untrustworthy. However, there is a great potential for abuse in claims which are based predominantly upon pain reported by the patient, particularly in circumstances where the patient's testimony or statement to the physician is the sole evidence of its continued presence. In these cases, it would be prudent to obtain additional medical evidence to either support or dispute the claim. Morris v. Lansdell's Frame Co., 547 So. 2d 782 (Miss. 1989).

7. Injury arising out of and during course of employment, generally.

Where the employees' injuries arose out of and in the course of employment, under Miss. Code Ann. § 71-3-3(b), their claims of battery and intentional infliction of emotional distress against the employer were not precluded by the Mississippi Workers' Compensation Act, Miss. Code Ann. § 71-3-9, as a matter of law. Franklin Corp. v. Tedford, — So. 3d —, 2009 Miss. LEXIS 169 (Miss. Apr. 16, 2009), opinion withdrawn by, substituted opinion at 18 So. 3d 215, 2009 Miss. LEXIS 426 (Miss. 2009).

An injury occurs in the course of the employment when it takes place within the period of employment, at a place where the employee reasonably may be in the performance of his duties, and while he is fulfilling those duties or engaged in doing something incidental thereto, or where he is engaged in the furtherance of the employer's business. Jefferson v. T.L. James & Co., 420 F.2d 322 (5th Cir. 1969).

Where the parties stipulated that a claimant's wrist injury was work-related, the Mississippi Workers' Compensation Commission erred in affirming an administrative law judge's (ALJ's) ruling that her injury at L-4 was not work-related, because that issue had not been before the ALJ and would ripen for adjudication only if and when she decided to undergo back surgery. Barber Seafood, Inc. v. Smith, 911 So. 2d 454 (Miss. 2005).

The injury arises out of and in the course the employment if the employment aggravates, accelerates, or contributes to the disability as opposed to being the sole or principal cause. Fought v. Stuart C. Irby Co., 523 So. 2d 314 (Miss. 1988).

Disability attendant on the general stress or normal human wear and tear of the workplace is not compensable under workers' compensation; however, benefits may be available where an employee experiences a series of identifiable and extraordinarily stressful work-connected incidents. Fought v. Stuart C. Irby Co., 523 So. 2d 314 (Miss. 1988).

The phrase "in the course of employment" as used in Code 1942 § 6998-04, does not mean that the worker must have died on the job or on the premises of the employer. Mississippi Research & Dev. Ctr. v. Dependents of Shults, 287 So. 2d 273 (Miss. 1973).

In an action on a claim for workmen's compensation benefits, it was for the commission, based on the medical and lay testimony, to determine not only whether the bulge or herniated disc and the resultant disability arose out of and in the course of the claimant's employment, but also to determine, if allowable, when compensability should begin. Central Elec. & Mach. Co. v. Shelton, 220 So. 2d 320 (Miss. 1969).

The signing of an application for group insurance benefits is a factor to be considered in determining whether an injury was work connected or arose out of a pre-existing condition, but it is not per se a bar to a claim under the Workmen's Compensation Law where the facts are in dispute. Central Elec. & Mach. Co. v. Shelton, 220 So. 2d 320 (Miss. 1969).

In a case in which it was contended that an employee who was injured as a consequence of a tornado was not entitled to compensation for the reason that his injuries resulted from an "act of God," the court announced as a general rule that it would recognize an employee's right to compensation for injury as "arising out of" his employment when the employee is injured at the place he is required to be engaged in the employer's business, and not that of his own, and where the employer's business required the employee to be at the place of the accident at the time it occurred. Wiggins v. Knox Glass, Inc., 219 So. 2d 154 (Miss. 1969).

Disability resulting from an occupational disease is not compensable under the Workmen's Compensation Law. Heckford v. International Paper Co., 242 Miss. 337, 135 So. 2d 415 (1961).

When an employee is on duty for 24 hours or is a resident employee, the entire period of his presence is within the course of his employment. M. & W. Constr. Co. v. Dependents of Bugg, 241 Miss. 133, 129 So. 2d 631 (1961).

An activity is related to the employment if it carries out the employer's purposes or advances his interests, directly or indirectly. M. & W. Constr. Co. v. Dependents of Bugg, 241 Miss. 133, 129 So. 2d 631 (1961).

An injury arises out of the employment where there is a causal connection between it and the job. Earnest v. Interstate Life & Accident Ins. Co., 238 Miss. 648, 119 So. 2d 782 (1960).

No unusual exertion on the part of an employee is necessary to make a claim compensable where it is clear that there is a causal connection between his work and injury or death. Russell v. Sohio S. Pipe Lines, 236 Miss. 722, 112 So. 2d 357 (1959).

Injury does not have to develop instantaneously, but may accrue gradually over a reasonably definite and not remote time. Insurance Dep't v. Dinsmore, 233 Miss. 581, 104 So. 2d 296 (1958).

8. —Injury compensable, generally.

An employer's workers' compensation carrier would be liable for the injuries of an employee who was injured while changing a neighboring business' outdoor advertising sign where the employer had a policy of goodwill toward its business neighbors, which included changing the sign for the neighboring business, and the employees were expected to help foster the goodwill policy; since the employee acted in conformity with his employer's dictates, he acted in the course and scope of his employment, and was not a loaned servant to the neighboring business. Quick Change Oil & Lube, Inc. v. Rogers, 663 So. 2d 585 (Miss. 1995).

The onset of an employee's essential tremors arose out of and in the course of employment where a cold tablet purchased from her employer exacerbated her pre-existing congenital condition and contributed to the onset of her essential tremor; the employer gained the benefits of lessening absenteeism due to illness by distributing the medication and, by memoranda, the employer suggested to its employees that they avail themselves of the medication provided at the employer's first-aid station. Quitman Knitting Mill v. Smith, 540 So. 2d 623 (Miss. 1989).

Exposure to falls upon a concrete floor is a sufficient risk attendant upon employment so that the death of a worker, caused by an idiopathic fall and striking of his head on the concrete floor of employer's premises, arose out of and within the course and scope of his employment, and the death was compensable. Chapman, Dependents of v. Hanson Scale Co., 495 So. 2d 1357 (Miss. 1986).

Where an employee, who was the president and general manager of a subsidiary corporate employer, who performed work for several subsidiaries and the master corporation, and who had flown the president of the master corporation to Texas and then flown on to Louisiana on business for his employer and other subsidiary corporations, the evidence was sufficient, upon a claim for death benefits by the employee's dependents, that the employee was performing services within the course and scope of his employment with his subsidiary corporate employer at the time of his death in a plane crash while he was returning to Texas from Louisiana to pick up the president of the master corporation. Dependents of Roberts v. Holiday Parks, Inc., 260 So. 2d 476 (Miss. 1972).

9. —Injury not compensable, generally.

A groundskeeper's aid was not acting within the scope of his employment when he drowned in a swimming pool, and therefore his parents were not barred by the exclusive remedy provisions of the Mississippi Workers' Compensation Act from bringing a wrongful death action on his behalf, where the employee was not required by his job duties to be in the vicinity of the swimming pool, he was supposed to be hoeing grass from a sidewalk outside the fence surrounding the pool at the time he entered the pool area, and the employer had specifically instructed the employee to stay away from the pool because he could not swim. Estate of Brown v. Pearl River Valley Opportunity, Inc., 627 So. 2d 308 (Miss. 1993).

An employee's injury did not arise out of and in the course of his employment as a sack boy at a grocery store where the injury occurred when a firecracker which the employee had been given by another worker exploded in his hand, and the store had a policy of no foul play, which included fireworks, so that the employee's conduct was against the rules of the business; the accident and injury were the result of the employee's own misuse of and involvement with an object which was prohibited and outside the scope of the employee's employment, and therefore the injury sustained was not compensable. Mathis v. Nelson's Foodland, Inc., 606 So. 2d 101 (Miss. 1992).

A back injury sustained by a secretary-receptionist when, against the express objections of her employer, she helped a fellow employee move a table through the employer's place of business and down some stairs, was not an injury or disease arising out of and in the course of employment within the meaning of Code 1942, § 6998-04. Odom's Dispensing Opticians v. Smith, 259 So. 2d 486 (Miss. 1972).

A claimant who was injured in an automobile accident while going to clean a well for a church with a mud pump he had borrowed from his employer was, under the evidence, engaged in a personal mission and not acting for his employer. McLain & Barnes Hdwe. Co. v. Wilson, 245 So. 2d 578 (Miss. 1971).

10. —Going to or returning from work.

The general rule is that the hazards encountered by employees while going to or returning from their regular place of work and off their employer's premises are not an incident to employment and accidents arising therefrom are not compensable, and an employee who claims an exception to this general rule has the burden of proving he comes within one of the exceptions. Aetna Fin. Co. v. Bourgoin, 252 Miss. 852, 174 So. 2d 495 (1965).

Generally, injuries received in going to or returning from work are not "in the course of employment". Scott Builders, Inc. v. Layton's Dependent, 244 Miss. 641, 145 So. 2d 165 (1962).

11. — —Injury compensable.

Injuries suffered while walking across a street to report for work were compensable under the special hazards exception to the "going and coming" rule since a benefits claimant was required to park in an employee lot and cross a street in the dark where there were no lights or traffic signals, and the fact that another lot existed did not bar recovery; moreover, the premises exception also applied, even though the employer did not own the parking lot, since the street was in such proximity to the premises to be, in effect, a part of such. Jesco, Inc. v. Cain, 954 So. 2d 537 (Miss. Ct. App. 2007).

An employee's injuries suffered in an automobile accident on her way home from work arose out of her employment, and were therefore compensable, where she was paid in part for her automobile and gasoline expenses to and from work by clocking in 45 minutes before she arrived at the office and clocking out 45 minutes after leaving the office. Matheson v. Favre, 586 So. 2d 833 (Miss. 1991).

Death of radio news reporter in automobile accident while reporter is going to station after having prepared news story at home arises out of and in scope of employment with station. Wilson v. Service Broadcasters, Inc., 483 So. 2d 1339 (Miss. 1986).

Worker's death resulting from being struck, by car while attempting to walk across heavily trafficked road to meet employee with whom worker commutes arises out of and during course of employment where worker has no practical alternate route to leave place of employment. Ingalls Shipbuilding Div., Litton Sys. v. Dependents of Sloane, 480 So. 2d 1117 (Miss. 1985).

Where claimant and his fellow employees on their way home from the site of their employment stopped and purchased a fifth of whisky which they began drinking, and later when they stopped by the roadside to relieve themselves the claimant stepped in a hole and broke his leg, the injury occurred within the scope and course of his employment, for the employer remunerated the employees for their transportation between the job site and their homes. Reading & Bates, Inc. v. Whittington, 208 So. 2d 437 (Miss. 1968).

A claimant required to possess and use an automobile in the course of his employment who understood, as an order, the request of his employer's manager that he pick the manager up at his home and drive him to work, received a compensable injury as a consequence of an accident that occurred while he was so engaged. Aetna Fin. Co. v. Bourgoin, 252 Miss. 852, 174 So. 2d 495 (1965).

Injury in automobile accident while being transported to place of work by employer's manager, held to arise out of and in course of employment. J.H. Tabb & Co. v. McAlister, 243 Miss. 271, 138 So. 2d 285 (1962).

Where an employer paid to his night watchman, who lived six or seven miles from the place of employment, an additional $3 per week for payment of transportation, an injury, causing death, sustained by the employee in driving in his automobile from place of employment to his home was compensable. Pace v. Laurel Auto Parts, Inc., 238 Miss. 421, 118 So. 2d 871 (1960).

Death of one, shot for some unknown reason by a fellow employee whom, in the discharge of his duty, he was transporting to place of work, held one arising out of and in the course of employment. Watson v. National Burial Ass'n, 234 Miss. 749, 107 So. 2d 739 (1958).

Death of employee struck by lightning when waiting near a truck in which he was being taken to a place of work, while inquiries were being made as to the route, held to arise out of and in the course of employment. Jackson v. Bailey, 234 Miss. 697, 107 So. 2d 593 (1958).

Where it appeared that a corporation's secretary-salesman was fatally injured in an automobile accident while on the way home after calling on a number of the corporation's customers, the death of the secretary-salesman arose out of and in the course of his employment. M.E. Badon Refrigeration Co. v. Badon, 231 Miss. 113, 95 So. 2d 114 (1957).

12. — —Injury not compensable.

Workers' compensation benefits were not awarded to a benefits claimant because he did not fall into any exceptions to the going and coming rule; a car accident happened over a mile from an employer's gates, the land surrounding the road was owned by the federal government, there was no history of accidents necessitating a warning sign to those using the roadway, the road was not heavily traveled, and the claimant was not required to cross a dangerous intersection. Moreover, expert testimony presented by the claimant on the issue of whether the road was hazardous was not credible due to discrepancies. Ladner v. Grand Bear Golf Course/Grand Casino of Miss., 973 So. 2d 1008 (Miss. Ct. App. 2008).

The arrival of an employee at the place where he was to be picked up by his employer's truck and driven to a construction site thirty minutes before he was to begin work was unnecessary, and the injury he sustained immediately after his arrival did not arise in the course of employment, and the Mississippi Workmen's Compensation Law did not apply. Jefferson v. T.L. James & Co., 420 F.2d 322 (5th Cir. 1969).

A claimant injured in an automobile accident while returning from work to his home as the guest passenger of a fellow employee was not entitled to compensation where the employer did not order the complainant to ride with his fellow-employee, nor was claimant paid any mileage to go to and from the job site. Perkinson v. Laurel Hot Mix, Inc., 252 Miss. 879, 174 So. 2d 391 (1965).

Fatal accident to an employee while driving employer's vehicle on returning from a midweek trip home held not to have arisen out of employment where the trip was for his personal pleasure and not under any agreement with the employer, whose policy was against such use of the employer's vehicles. Phillips Contracting Co. v. Adair's Dependents, 245 Miss. 365, 148 So. 2d 189 (1963).

Injuries sustained by district manager for an insurance company did not rise out of or in the course of his employment where sustained while manager was on a trip to obtain his own car and to return it to the place where he was stationed, and the fact that the manager looked over some insurance policies, collected a premium, and discussed a permanent plan of insurance with a customer did not change the result. National Bankers Life Ins. Co. v. Jones, 244 Miss. 581, 145 So. 2d 173 (1962).

Injuries sustained by a plant manager in an automobile accident while returning to his home in another city are not connected with his employment where he was expected to remain in town, and received an allowance toward his expenses in doing so. Edward Hyman Co. v. Rutter, 241 Miss. 301, 130 So. 2d 574 (1961).

13. — —Presumptions in death cases.

The Workers' Compensation Commission's denial of benefits to an asthmatic employee would be reversed, even though a physician testified that there was not a "strong work-related causal connection between [the employee's] pneumonia and emphysema," where medical testimony established a causal connection between the exacerbation of her pre-existing respiratory problems and the inhalation of irritants in her work environment, and the employee's uncontroverted testimony of the onset pain in her side and back along with shortness of breath while she was performing her job duties established that her injury arose out of and in the course of her employment. Hedge v. Leggett & Platt, Inc., 641 So. 2d 9 (Miss. 1994).

When a worker is found dead at a place where the duties of employment require him to be, a rebuttable presumption arises that the worker's death was in whole or in part the result of an accident arising out of and in the course of his employment. Road Maintenance Supply, Inc. v. Dependents of Maxwell, 493 So. 2d 318 (Miss. 1986).

When an employee has died while about his employment, a presumption rises that his death was causally related to his work activities, and before such presumption can be overcome, the employer must explain fully the cause of death and the work activities of the employee to show that there was no causal relation. McCarley v. Iuka Shirt Co., 258 So. 2d 421 (Miss. 1972).

Where an employee is found dead at a place where his duties required him to be, there is a presumption that his death was a result of an accident arising out of and in the course of his employment, which presumption imposes on the employer not only the burden of overcoming it by evidence in explanation of the cause of death, but the further burden of developing the work activities of the employee to show that such activities did not contribute to the cause of death. City of Okolona v. Dependent of Harlow, 244 So. 2d 25 (Miss. 1971).

In the absence of evidence to the contrary, an employee found dead of a heart attack at his employer's place of business is entitled to the presumption that the heart attack resulting in death was causally connected to his work activities, and the employer is under the burden of overcoming this presumption. Washington v. Greenville Mfg. & Mach. Works, 223 So. 2d 642 (Miss. 1969).

Where an employee is killed by a third party not connected with the employer or employee in any way, the burden of proof rests squarely upon the claimants to show that the death was causally connected with the employment, and the mere fact that the employee is at his place of employment when he meets his death is not sufficient. Dewberry v. Carter, 218 So. 2d 27 (Miss. 1969).

The inference of causal connection between employment and death cannot only be indulged when the decedent is "found dead" at his place of employment but also when an employee "falls dead" in the presence of other employees. Mississippi State University v. Dependents of Hattaway, 191 So. 2d 418 (Miss. 1966).

Death at place of employment during work hours gives rise to a rebuttable presumption that it resulted from injury arising out of and in the course of employment. L.B. Priester & Son v. Bynum's Dependents, 247 Miss. 664, 157 So. 2d 399 (1963).

When it is shown that an employee was found dead in a place where his duties required him to be, or where he might properly have been in performance of his duties during the hours of his work, in the absence of evidence that he was not engaged in his master's business, there is a presumption that the accident arose out of and in the course of employment within the meaning of the compensation law. Majure v. William H. Alsup & Assocs., 216 Miss. 607, 63 So. 2d 113 (1953); Winters Hardwood Dimension Co. v. Dependents of Harris, 236 Miss. 757, 112 So. 2d 227 (1959); Dependents of Ingram v. Hyster Sales & Serv., Inc., 231 So. 2d 500 (Miss. 1970).

14. — —Particular death cases.

A circuit court judgment affirming the Workers' Compensation Commission's denial of benefits to a deceased employee's children was not supported by substantial evidence and would be reversed where the onset of the employee's death occurred at her place of employment and the employer failed to rebut the presumption that the employee's work activities did not cause or contribute to the condition from which she died; the unrebutted "found dead" legal presumption prevailed, satisfying the causal connection between the employee's work duties and the condition which resulted in her death. Nettles v. Gulf City Fisheries, Inc., 629 So. 2d 554, 47 A.L.R.5th 977 (Miss. 1993).

Presumption that accident arose out of and in course of employment arises when employee is found dead or falls dead at place where his duties require him to be or where he might properly be in performance of duties, and testimony by employee's physician regarding possibility that employee suffered attack of acute malignant arrhythmia was not sufficient to meet burden of proof required to rebut presumption. United States Rubber Reclaiming Co. v. Dependents of Stampley, 508 So. 2d 673 (Miss. 1987).

Where decedent was found unconscious, slumped over his desk over a set of plans he had been working on, a presumption arose that the deceased died as a result of an accidental injury in the course of his employment, and further that there was a causal connection between such employment and the employee's death. Alexander v. Campbell Constr. Co., 288 So. 2d 4 (Miss. 1974).

Where the testimony of the physician who had treated the decedent both during his final and fatal heart attack, suffered while working, and during an attack suffered at home some six months before the final attack, was, though somewhat ambiguous, definite enough to constitute an unrebutted medical opinion, it was sufficient to establish that the decedent's work activities contributed to the fatal illness. Futorian Mfg. Co. v. Easley's Dependents, 244 So. 2d 413 (Miss. 1971).

Where an employee, who had no fixed hours of work, but was on 24-hour call for service on machines sold by his employer, was found lying dead on the ground in front of the truck furnished him by his employer, and the hood of the truck was raised and there was evidence that there had been a fire under the hood involving wiring, such evidence together with the presumption applicable in such cases, sufficiently established that the employee's fatal heart attack was an injury arising out of and in the course of his employment during an emergency when he was attempting to preserve his employer's property. Dependents of Ingram v. Hyster Sales & Serv., Inc., 231 So. 2d 500 (Miss. 1970).

The death of an employee who was shot and killed in a public road near the place of his employment for personal reasons in no wise connected with his job is not compensable. Dewberry v. Carter, 218 So. 2d 27 (Miss. 1969).

The compensation commission is an administrative agency, not a court of law, and there is no method provided by law by which this agency may adjust equities between insurance carriers. Thyer Mfg. Co. v. Mooney, 252 Miss. 629, 173 So. 2d 652 (1965).

An award may properly be made for the death of a mechanic on 24-hour duty, found dead on his employer's premises, beneath a truck owned by him which he used in his employer's business, in the absence of any showing that he was at the time acting for himself. M. & W. Constr. Co. v. Dependents of Bugg, 241 Miss. 133, 129 So. 2d 631 (1961).

Death, from heart attack, of a rubbish collector found lying unconscious in a bin the contents of which he had been shoveling into a truck, held to have arisen out of and in the course of his employment. Shannon v. City of Hazlehurst, 237 Miss. 828, 116 So. 2d 546 (1959).

Compensation should have been awarded for the death of a member of an electric power company's maintenance crew, who had hypertensive cardiovascular disease and who, after a day's work of heavy physical labor during which he experienced pains in the cardiac region, went directly to his physician's office and within an hour dies of a heart attack. Central Elec. Power Ass'n v. Hicks, 236 Miss. 378, 112 So. 2d 230 (1959).

A traveling salesman, killed when his car was wrecked on a highway which he would traverse while on his employer's business, is presumed to have been in the course of his employment, although his death was late at night, at a time beyond his regular working hours, and his equipment was in his room at a tourist court. Bryan Bros. Packing Co. v. Murrah's Dependents, 234 Miss. 494, 106 So. 2d 675 (1958).

Evidence that an employee was murdered by a jilted suitor and that the only connection between her employment and the cause of her death was that she was on duty at the time she was shot and was merely informing the slayer of the rules of the telephone company, which prohibited visitors in the operating room of the telephone exchange, and that the slayer immediately after shooting the employee turned a pistol upon himself and committed suicide, failed to establish that the employee was killed because of her employment, and therefore she was not under the protection of the Workmen's Compensation Law. West's Estate v. Southern Bell Tel. & Tel. Co., 228 Miss. 890, 90 So. 2d 1 (1956).

15. —Proof of claim.

Denial of workers' compensation benefits to an employee was inappropriate because the employee met his burden of proof showing that he had an injury, or an exacerbation of a preexisting injury, when he moved a desk at the behest of his supervisor. Any doubtful claims were to be resolved in favor of compensation. Short v. Wilson Meat House, LLC, 37 So. 3d 50 (Miss. Ct. App. 2009), reversed by 36 So. 3d 1247, 2010 Miss. LEXIS 310 (Miss. 2010).

In order to establish industrial disability, the burden is upon the claimant to prove medical impairment and that the medical impairment resulted in a loss of wage-earning capacity. Robinson v. Packard Elec. Div., GMC, 523 So. 2d 329 (Miss. 1988).

When a claimant seeks compensation benefits for disability resulting from a mental or psychological injury, the claimant has the burden of proving by clear and convincing evidence the connection between the employment and the injury. Fought v. Stuart C. Irby Co., 523 So. 2d 314 (Miss. 1988).

Fact that claimant for disability benefits does not report injury until 4 days after it occurs neither proves that disability must have been caused by something other than injury in course of employment nor bars claim as untimely, notwithstanding employer's policy requiring that workers report injuries immediately. South Cent. Bell Tel. Co. v. Aden, 474 So. 2d 584 (Miss. 1985).

The burden of proving his claim beyond speculation and conjecture is on the claimant, and he must prove that his injury is one which arises out of, and is sustained in, the course of employment. Flintkote Co. v. Jackson, 192 So. 2d 395 (Miss. 1966); Johnson v. Gulfport Laundry & Cleaning Co., 249 Miss. 11, 162 So. 2d 859 (1964).

Claimant has the burden of establishing every essential element of the claim, and it is not sufficient to leave anything to surmise or conjecture. Narkeeta, Inc. v. McCoy, 247 Miss. 65, 153 So. 2d 798 (1963).

The burden is on claimant to show that disability resulted from, or was substantially caused by, an injury received while employed. Wells-Lamont Corp. v. Watkins, 247 Miss. 379, 151 So. 2d 600 (1963).

The presumption that injury sustained by an employee arose out of his employment is rebuttable. Connell v. Armstrong Tire & Rubber Co., 242 Miss. 280, 134 So. 2d 435 (1961).

Where accident arising out of and in the course of the employment is shown, the burden is on the employer to prove that disability is due to some cause for which he is not responsible. Hale v. General Box Mfg. Co., 235 Miss. 301, 108 So. 2d 844 (1959).

Where an employee was found to have tuberculosis on a date some six weeks after he had left the employment of his former employer and started working for an independent contractor, medical evidence, including testimony as to the rapid progress of tuberculosis in members of the negro race, as well as the difficulty of determining when the employee first contracted the disease, presented a question of fact for the workmen's compensation board as to whether the employee had the disease at the time he left the former employer's service, and its determination that he did not, being supported by substantial evidence, would be affirmed. Lawson v. Traxler Gravel Co., 229 Miss. 159, 90 So. 2d 204 (1956).

16. — —Benefits granted.

Testimony of claimant's physician giving opinion to reasonable medical certainty that claimant has experienced injury resulting in claimant being 100 percent disabled is sufficient to support finding of disability, notwithstanding contradictory testimony by employer's physician, where claimant's physician has examined and treated claimant on 9 or 10 occasions and employer's physician has examined claimant on only one occasion, some 10 months after most recent examination by claimant's physician. South Cent. Bell Tel. Co. v. Aden, 474 So. 2d 584 (Miss. 1985).

In an action on a claim for workmen's compensation benefits, evidence that the claimant, while at work, slipped and sustained pain to his back, which necessitated his taking some days from work, and that upon his return, he again hurt his back picking up a heavy object, sustained the commission's findings that a bulge or herniated disc and resultant disability arose out of and in the course of the claimant's employment, notwithstanding other evidence that the claimant prior to these injuries was found to have a degree of degenerative arthritis of some duration, and medical testimony suggesting that at least part of the disability was attributable to the pre-existing degenerative condition. Central Elec. & Mach. Co. v. Shelton, 220 So. 2d 320 (Miss. 1969).

A decedent who, immediately after his employment, was given a check by his employer as an advance against future wages and the permission to use employer's truck to go get it cashed and who died in a one car accident while on his way to get the money was not, at the time, within the scope and course of his employment. Sam Jones Casing Crews v. Dependents of Skipper, 199 So. 2d 436 (Miss. 1967).

Sickness occasioned by finding part of a mouse in a bottle of soft drink purchased by an employee during a midmorning break from a vending machine on the employer's premises for the convenience of the personnel, is compensable as being in the course of the employment. Collums v. Caledonia Mfg. Co., 237 Miss. 607, 115 So. 2d 672 (1959).

Evidence did not warrant commission's finding that loss of sight of one eye was unrelated to employment of one who, in handling chemical mixture, splashed some into eye. Mississippi Valley Aircraft Serv. v. Brown, 236 Miss. 511, 111 So. 2d 28 (1959).

Uncontradicted testimony of an employee that he suffered a heart attack while at work involving physical exertion requires an award of compensation. Shivers v. Biloxi-Gulfport Daily Herald, 236 Miss. 303, 110 So. 2d 359 (1959).

That one suffering a heart attack while at work remained at home for some time before going to a hospital does not negative injury on the job. Shivers v. Biloxi-Gulfport Daily Herald, 236 Miss. 303, 110 So. 2d 359 (1959).

Commission's award of compensation benefits to an employee who sustained leg injuries while in the course of his employment was affirmed, notwithstanding conflicting evidence as to whether the injury aggravated the employee's varicose veins, or whether the pre-existing condition interfered with the healing of the injury. Jackson Ready-Mix Concrete v. Young, 230 Miss. 644, 93 So. 2d 645 (1957).

Where a partnership which had a gin in use only six or seven months, in order to obtain a competent gin operator, hired a worker on a year-round basis and assigned other duties in addition to operating and repairing the gin, the injury suffered by the worker under the contract of employment and under direction of one of the partners arose out of and in the course of his employment. National Sur. Corp. v. Kemp, 217 Miss. 560, 65 So. 2d 840 (1953).

Where a housewife had for five years and with the knowledge of compensation carrier and her employer performed all her services as bookkeeper during evenings in her living room while seated at couch and working at a small table and where one night she put on her night clothes, for the purpose of being ready for bed after finishing bookkeeping work, the injury she received when her husband's shotgun discharged while she was removing it from the couch just before beginning her work, was one arising out of and in the course of employment. Joe Ready's Shell Station & Cafe v. Ready, 218 Miss. 80, 65 So. 2d 268 (1953).

Where claimant was hired by partners on a yearly basis under a contract requiring him to take full charge of gin during ginning season and where he was customarily directed by partners during off season to do various jobs on farm buildings of the partners, the claimant was within the scope of his employment when erecting a political sign at direction of partner who was running for office of sheriff, and injuries sustained while erecting the sign arose out of and in course of the employment within meaning of the compensation law. National Sur. Corp. v. Kemp, 217 Miss. 560, 65 So. 2d 840 (1953).

Where a contractor hired a person to paint service stations and had the person transport doors, this created the relationship of employer and employee and when the painter was injured in an accident while transporting the doors the injury was compensable as arising out of and in the course of employment. Mills v. Jones' Estate, 213 Miss. 680, 56 So. 2d 488 (1952), modified, 213 Miss. 685, 57 So. 2d 496 (1952), overruled on other grounds, Railway Express Agency, Inc. v. Hollingsworth, 221 Miss. 688, 75 So. 2d 639 (1954).

17. — —Benefits denied.

The evidence was insufficient to support a finding by the Workers' Compensation Commission that a claimant's back injury was work related where no doctor testified that the claimant received this injury on the job, no fellow worker corroborated the claimant's assertion that his injury occurred while on the job, and the claimant never reported any work related injury to his employer. Bechtel Corp. v. Phillips, 591 So. 2d 814 (Miss. 1991).

A determination that the death of an employee did not occur during the course of his employment so as to entitle his dependents to death benefits would be affirmed, where the employee died while on a fishing trip sponsored and financed by his employer who did nothing to cause employees to believe that they would lose anything by not attending, where no customers were entertained nor pep talks given on the trip, where no one was penalized in any way for not going or gained any advantage by going, and where there was nothing to indicate even indirect compulsion requiring the employee to go on the outing, the fact that the employer testified that one of the purposes was to promote better relationship between the company and his employees not being such a substantial benefit as to require a finding that the employee was within the course of his employment. Dependents of

Staten v. Ewing Gas Co., 243 So. 2d 561 (Miss. 1971).

Workmen's compensation benefits were denied a hand sander who allegedly injured his back when turning a heavy desk on a conveyor belt where two of the claimant's co-workers testified that he made no complaint to either of them at the time about being injured and, although he left work and went home, claimant did not go to a doctor for several days following the accident. Hamilton Mfg. Co. v. Kern, 242 So. 2d 441 (Miss. 1970).

The evidence, including evidence that the claimant worked a full day on the day on which she claimed she was injured on the job, which was on a Friday, and worked all day on the following Tuesday, having seen the doctor on Monday whom she did not tell at the time that she had injured her back on the job, and testimony that the claimant had told three witnesses prior to the date of the claimed injury that she had fallen at home and hurt her back, was sufficient to support the commission's order denying workmen's compensation benefits. Cofer v. Garan, Inc., 235 So. 2d 251 (Miss. 1970).

Claimant, employed as an insurance salesman and agent by the state agency for several companies, who maintained an office in his home, and fell, suffering injuries, when he arose from a chair to answer an expected business telephone call, was held not to have been injured in the course of his employment. Shoffner v. Vestal & Vernon Agency, 217 So. 2d 627 (Miss. 1969).

An employee who, following his use of abusive language to a cafe waitress, was arrested for disturbing the peace and subsequently shot and killed by the arresting officer was not acting within the scope and course of his employment at the time of his death. Dennis Bros. Constr. Co. v. Dependents of Duett, 196 So. 2d 88 (Miss. 1967).

A claimant who had a pre-existing ruptured disc and, as a consequence of his coughing or sneezing while driving a truck for his employer, suffered an additional back injury, was not entitled to compensation, for the cough or sneeze which caused the injury was completely unrelated to his employment as a truck driver. Malone & Hyde of Tupelo, Inc. v. Hall, 183 So. 2d 626 (Miss. 1966).

Injuries to attorney who fell in shower in hotel where he was staying in order to investigate a case, held not to have arisen out of and in the course of his employment. Breland & Whitten v. Breland, 243 Miss. 620, 139 So. 2d 365 (1962).

An insurance salesman who, while waiting to transport a customer to a doctor for medical examination, was injured when a shotgun, which he had taken from his car, accidentally discharged, did not receive an injury arising out of his employment. Earnest v. Interstate Life & Accident Ins. Co., 238 Miss. 648, 119 So. 2d 782 (1960).

Where an employee of a construction company was severely burned when tent he was occupying caught fire, and where he was not required to use the tent and no charge or reduction in wages was made on account of the tents which were donated to such employees as cared to avail themselves of them and at the time of injury the employee was off duty and free to go where he wished and he was not performing any service or complying with any order of the employer, the injury did not arise out of and in the course of employment. Thornton v. Louisiana-Mississippi Pipeline Constr. Co., 214 Miss. 314, 58 So. 2d 795 (1952).

18. Accidental injury or death.

That death resulted from an injury arising out of and in course of employment may be established by circumstantial evidence. L.B. Priester & Son v. Bynum's Dependents, 247 Miss. 664, 157 So. 2d 399 (1963).

Whether death was the result of an injury arising out of and in the course of employment is ordinarily a question of fact. L.B. Priester & Son v. Bynum's Dependents, 247 Miss. 664, 157 So. 2d 399 (1963).

Where the claim is based on a mental or nervous condition, an accident must be established by evidence bringing it in the realm of probability, and a causal connection proved by clear evidence. International Paper Co. v. Wilson, 243 Miss. 659, 139 So. 2d 644 (1962).

A presumption of accident arising out of and in the course of employment arises where one is found dead or dying at a place where his duties required him to be, or where he might properly have been in the performance of his duties during hours of work, in the absence of evidence that he was not engaged in his employer's business. Shannon v. City of Hazlehurst, 237 Miss. 828, 116 So. 2d 546 (1959).

The exertion which caused the accident need not have been of an unusual character. Shannon v. City of Hazlehurst, 237 Miss. 828, 116 So. 2d 546 (1959).

An accidental injury need not result suddenly or from the immediate application of external force, but may accrue gradually over a reasonably definite and not a remote time. Shivers v. Biloxi-Gulfport Daily Herald, 236 Miss. 303, 110 So. 2d 359 (1959).

The word "accident" has a generally accepted meaning as something happening without design and being unforeseen and unexpected to the person to whom it happens. L.B. Priester & Son v. McGee, 234 Miss. 471, 106 So. 2d 394 (1958).

Whether or not an injury is accidental must be determined from the viewpoint of the employee. L.B. Priester & Son v. McGee, 234 Miss. 471, 106 So. 2d 394 (1958).

19. —Entitled to benefits.

Where record showed that claimant was injured, in that his prior asthmatic condition was aggravated and accelerated because of the dust and chemicals he was forced to breathe while engaged in his employment, it was clear that the claimant's disability could be characterized as an accidental injury arising out of and in the course of his employment. Boyd v. State, 291 So. 2d 560 (Miss. 1974).

Where claimant's condition grew progressively worse from 1963 to 1969, when he quit his job on the advice of two doctors, the injury may have been gradual, but it was clear that the working conditions aggravated his asthma and emphysema. Boyd v. State, 291 So. 2d 560 (Miss. 1974).

The commission's findings that a registered nurse slipped and fell in the hospital corridor, striking her head, and that this was an accidental injury arising out of her employment, was warranted by the evidence, despite other evidence that the nurse had had epileptic seizures, although none for at least five years, and testimony of hospital employees that while walking past the office the claimant grabbed her throat and fell in a rigid position. Doctors Hosp. v. Becker, 235 So. 2d 702 (Miss. 1970).

A claimant who fainted while lifting a three-pound spool of thread above her head to place it on a knitting machine and, as a consequence, fell to the floor, sustained a back injury distinguishable from an injury resulting from an indiopathic level-floor fall, and was one for which she was entitled to compensation. Cooper's, Inc. v. Long, 224 So. 2d 866 (Miss. 1969).

Where the evidence showed that the claimant had received an electrical shock in the course of her employment and the medical evidence revealed that she had been disabled since her accident, that her headaches, neck spasms, vomiting, and anxiety reaction were related to the electrical shock, and that an acute duodenal ulcer developed as a result of her taking medication for the relief of the symptoms caused by her shock, she was entitled to recover compensation for the conditions which bore a causal relationship to the original accident. Burnley Shirt Corp. v. Simmons, 204 So. 2d 451 (Miss. 1967).

Claimant who sustained a severe strain in the course of her employment, resulting in a cystocele, a rectocele, and a prolapsed uterus, making her wholly unfit for the work which she had previously been doing, had sustained permanent partial disability entitling her to compensation benefits for 450 weeks. Mississippi Nursing Home v. Sessums, 253 Miss. 797, 180 So. 2d 157 (1965).

A claimant employed in a packing house, who incurred on his job numerous cuts and scratches while handling the waste products from slaughtered animals and as a consequence contracted brucelosis or undulant fever, had sustained a compensable accidental injury. Mid-South Packers, Inc. v. Hanson, 253 Miss. 703, 178 So. 2d 689 (1965).

An award is permissible in the case of one who, while engaged in heavy manual labor on a hot day and whose health had previously been good, collapsed at his place of work and died of what may have been a heat stroke, though at first diagnosed as a coronary occlusion. Winters Hardwood Dimension Co. v. Harris' Dependents, 236 Miss. 757, 112 So. 2d 227 (1959).

That employee having a heart disease had been told by his employer not to do any heavy lifting, inadvertently over-exerted himself on the job, does not deprive the occurrence of an accidental character. Shivers v. Biloxi-Gulfport Daily Herald, 236 Miss. 303, 110 So. 2d 359 (1959).

A heart attack suffered by a construction worker who had had one four years before but who had no reason to expect a recurrence, while working with a companion on a scaffold with chisel and hammer to cut metal overhead, held an accidental injury for which compensation is allowable. L.B. Priester & Son v. McGee, 234 Miss. 471, 106 So. 2d 394 (1958).

An employee who, although having had one heart attack, had been able to satisfactorily work more or less constantly for two and a half years could not be said to have such intention or expectation of a second heart attack on the particular date of his injury as to strip the occurrence of its accidental character. L.B. Priester & Son v. McGee, 234 Miss. 471, 106 So. 2d 394 (1958).

Under conflicting evidence, an award of compensation to claimant for injuries to his teeth, without any award for injuries to his coccyx sacrum and rectum, was affirmed. Fondren v. Fortenberry Drilling Co., 233 Miss. 210, 101 So. 2d 654 (1958).

Where an employee in a bakery suffered a disability caused by allergy resulting from his contact with a baker's pad or mitten which he was required to use in handling hot pans of bread as they came from the oven, this disability resulted from accidental injury within purview of Workmen's Compensation Law rather than from an occupational disease. Hardin's Bakeries, Inc. v. Ranager, 217 Miss. 463, 65 So. 2d 461 (1953).

Where an employee suffered a heart attack shortly after he and two other men lifted an end of iron pipe, weighing approximately a thousand pounds, and this resulted in a coronary occlusion, this heart attack was accidental and compensable. LaDew v. LaBorde, 216 Miss. 598, 63 So. 2d 56 (1953), corrected, 216 Miss. 606, 63 So. 2d 825 (1953).

20. —Not entitled to benefits.

Although conflicting, lay and medical evidence supported finding of commission that claimant's anxiety neurosis did not result from accidental injury. Mississippi Prods., Inc. v. Skipworth, 238 Miss. 312, 118 So. 2d 345 (1960).

Death of truck driver drowned when truck went into a river is not compensable where there is no proof of what his duties were or where he was required to perform them. Erwin v. Hayes, 236 Miss. 123, 109 So. 2d 156 (1959).

In a proceeding for death benefits, evidence sustained the workmen's compensation commission's finding that the deceased, at the date of his injury, was not an employee of the company against whom the claim was asserted, and that the persons for whom deceased was working were not employees of the company. Oatis' Estate v. Williamson & Williamson Lumber Co., 230 Miss. 270, 92 So. 2d 557 (1957).

Under evidence tending to establish that claimant's injuries were sustained while in the employment of a former employer rather than the employer against whom proceedings for workmen's compensation benefits was instituted, and that the work done while in the employment of the latter did not aggravate his injury, finding of the workmen's compensation commission that claimant failed to show that he had sustained an accidental injury was supported by substantial evidence. Anderson v. Ingalls Shipbuilding Corp., 229 Miss. 670, 91 So. 2d 756 (1957).

21. Causal relation.

Despite the fact that an administrative law judge held an employee to the correct burden of proof with regard to her claim for workers' compensation benefits based on depression and anxiety secondary to an accident, the record lacked substantial evidence to support a finding that the employee was entitled to benefits because the medical record did not indicate that her condition was the result of the accident. Hosp. Housekeeping Sys. v. Townsend, 993 So. 2d 418 (Miss. Ct. App. 2008).

An injured construction worker was a statutory employee of the general contractor where the worker was the son of the carpentry subcontractor, the subcontractor did not have a workers' compensation insurance policy in effect at the time of the injury, and the general contractor had been advised of the subcontractor's lack of insurance prior to the date of the injury. Vance v. Twin River Homes, Inc., 641 So. 2d 1176 (Miss. 1994).

The mere presence of an employee on the premises where his work is to be performed is not enough to establish the required causal connection between the employee's injury and the conditions under which his work is to be performed. Jefferson v. T.L. James & Co., 420 F.2d 322 (5th Cir. 1969).

An employee's usual routine upon reaching the place of business where he worked is irrelevant, and an expert medical witness, in response to a hypothetical question, should not take into consideration "an invariable practice" unless it was proved that the employee followed that routine on the occasion when his death resulted. Washington v. Greenville Mfg. & Mach. Works, 223 So. 2d 642 (Miss. 1969).

It is doubtful that a presumption of causal connection arises at all unless the claimant dies, because, if he lives, it is within his power, and it is his duty, to meet the burden of showing that his injury arose out of and in the course of his employment. Kersh v. Greenville Sheet Metal Works, 192 So. 2d 266 (Miss. 1966).

While the burden of proof is on the claimant, there is created a rebuttable presumption of work connection in the case of an unexplained death while on the job. L.B. Priester & Son v. Bynum's Dependents, 244 Miss. 196, 142 So. 2d 30 (1962), overruled on other grounds, Wilson v. Mississippi Emp. Sec. Comm'n, 643 So. 2d 538 (Miss. 1994).

Since a claim for disability is separate and distinct from a claim for death benefits, the 1960 amendment to subsection (9) of Code 1942, § 6998-02 [now subsection (i) of Code 1972, § 71-3-3], requiring that incapacity and the extent thereof be supported by medical findings, did not eliminate the presumption of causal connection between the employment and death occurring while the employee is engaged in the duties of his employment, particularly since the 1960 amendment did not affect subsection (3) of Code 1942, § 6998-02 [now subsection (c) of Code 1972, § 71-3-3]. L.B. Priester & Son v. Bynum's Dependents, 244 Miss. 196, 142 So. 2d 30 (1962), overruled on other grounds, Wilson v. Mississippi Emp. Sec. Comm'n, 643 So. 2d 538 (Miss. 1994).

An injury arises out of the employment when there is a causal connection between it and the job. M. & W. Constr. Co. v. Dependents of Bugg, 241 Miss. 133, 129 So. 2d 631 (1961).

In all but simple cases medical causation must be established by expert testimony. Cole v. Superior Coach Corp., 234 Miss. 287, 106 So. 2d 71 (1958).

Burden of proof is on claimant to prove causal connection between employment and injury. Sullivan v. C. & S. Poultry Co., 234 Miss. 126, 105 So. 2d 558 (1958).

It is not necessary to show that the exertion which occurred in precipitating the harm was not in itself unusual or beyond the routine of the employment, but, provided the causal relationship to the employment is shown, aggravating, precipitating, or combining with the disease or infirmity to produce death, the exertion may be usual and customary, and still satisfy the requirement that injury be accidental and arise out of the employment. Poole v. R.F. Learned & Son, 234 Miss. 362, 103 So. 2d 396 (1958).

The work of an employee need only be a contributing cause, not the sole cause of the injury, in order that the injury may be deemed to arise out of and in the course of his employment. Prince v. Nicholson, 229 Miss. 718, 91 So. 2d 734 (1957).

It is not necessary to show that the exertion which occurred in precipitating the harm was in itself unusual or beyond the routine of the employment, provided the causal relation is shown; the exertion may be usual and customary and still satisfy the requirements that the injury be accidental and arise out of employment. W.G. Avery Body Co. v. Hall, 224 Miss. 51, 79 So. 2d 453 (1955).

An injury arises out of employment when, but only when, there is a causal connection between such injury and the conditions under which the work is required to be performed; it is not sufficient that the employee is at the place of his employment at the time of the accident and doing his usual work. Brookhaven Steam Laundry v. Watts, 214 Miss. 569, 55 So. 2d 381 (1951).

22. —Causal connection established.

Finding that workers' compensation benefits were wrongfully denied to the employee was appropriate because the case was doubtful as to whether the existence of any real or imagined relationship between the former coworker and the employee was the sole cause of the employee's injuries; doubtful claims were to be resolved in favor of compensation. Int'l Staff Mgmt. & Legion Ins. Co. v. Stephenson, 46 So. 3d 367 (Miss. Ct. App. 2010), writ of certiorari denied by 49 So. 3d 636, 2010 Miss. LEXIS 564 (Miss. 2010).

The Workers' Compensation Commission's finding that the claimant's exposure to chemicals in his employment did not result in an injury was not based on substantial evidence since (1) there was no doubt that the claimant suffered an injury, (2) the connections between the claimant's work environment and his health were simply too numerous to be purely coincidental, and (3) although the claimant was better, his future employment was limited in general and he was permanently restricted from working around such chemicals as found at his employment. Sharpe v. Choctaw Elecs. Enters., 767 So. 2d 1002 (Miss. 2000).

A doctor's inability to pinpoint the exact physical cause of an employee's disability did not alone defeat the employee's claim for compensation, given the beneficent purpose of the Workers' Compensation Act, where there was uncontradicted testimony that the employee was injured while performing his job and that he was totally and permanently disabled. Trest v. B.C. Rogers Processors, Inc., 592 So. 2d 110 (Miss. 1991).

The evidence established that the employee's death, caused by an overdose of medication combined with alcohol consumption, resulted from a mental disturbance which resulted from his job-related injury; there was insufficient evidence to conclude that the employee's death had been the result of an independent intervening cause. Kelly Bros. Contractors v. Windham, 410 So. 2d 1322 (Miss. 1982).

Where record showed that claimant was injured, in that his prior asthmatic condition was aggravated and accelerated because of the dust and chemicals he was forced to breathe while engaged in his employment, it was clear that the claimant's disability could be characterized as an accidental injury arising out of and in the course of his employment. Boyd v. State, 291 So. 2d 560 (Miss. 1974).

Where it was found as a matter of law that a deceased employee's death from a heart attack was causally related to the duties of his employment, such finding contained the implicit finding that the duties of employment substantially contributed to his death and an order awarding nominal compensation to the decedent's dependents of one percent or $125, would be reversed, since a mere nominal sum may not be awarded when there is liability for death benefits. Dependents of Barrett v. Leake County Coop. (A.A.L.), 249 So. 2d 387 (Miss. 1971).

The overwhelming weight of the evidence reflected that a stroke suffered by a 40-year-old driver of a large tractor-trailer truck, whose job involved responsibility and sustained concentration over many hours, as well as substantial physical effort and mental strain, was causally related to the stress and strain of his job, which aggravated his pre-existing condition of a congenital aneurism. Dean Truck Line v. Wilkes, 248 So. 2d 462 (Miss. 1971).

23. — —Causal connection not established.

Benefits denied where the testimony of four doctors was inconclusive as to a causal link between claimant's respiratory injuries and his working conditions at employer electronics company. Sharpe v. Choctaw Elecs. Enters., 753 So. 2d 1127 (Miss. Ct. App. 1999).

A finding by the Workers' Compensation Commission that an injured manual laborer who was restricted by his doctor to lifting less than 40 pounds suffered only minimal industrial incapacity was not supported by substantial evidence where the decision was based largely on an alleged policy of the employer requiring workers to seek assistance when lifting more than 40 pounds, but the record contained no evidence of such a policy. DeLaughter v. South Cent. Tractor Parts, 642 So. 2d 375 (Miss. 1994).

The circuit court did not err in reversing the Workers' Compensation Commission's finding that a claimant with a back injury had reached maximum medical improvement and suffered no permanent disability where there was evidence that the claimant had 2 ruptured discs surgically removed, specialists who initially concluded that the claimant had no ruptured discs did not later examine him after the discovery of the ruptured discs was made, and the employer failed to show that the claimant suffered any disassociated intervening injury which caused the ruptured discs, their surgical removal and the resulting disability. Marshall Durbin Cos. v. Warren, 633 So. 2d 1006 (Miss. 1994).

The evidence supported a finding that the decedent was under no physical or mental strain when he suffered a heart attack, while engaged in using a screwdriver to adjust the buttonhole chute on a sewing machine, and further supported the conclusion that there was no causal connection between employment and death. McCarley v. Iuka Shirt Co., 258 So. 2d 421 (Miss. 1972).

24. —Heart cases.

Where one is subjected to extraordinary mental and physical stress and strain brought about by one's employment, his resulting heart attack does not become noncompensable, just because it is constant and occurs over a period of several months. Mississippi Research & Dev. Ctr. v. Dependents of Shults, 287 So. 2d 273 (Miss. 1973).

The presumption that a heart attack while at work is work-connected is not conclusive, but may be rebutted by proof of circumstances. Mississippi Hwy. Patrol v. Neal's Dependents, 239 Miss. 505, 125 So. 2d 544 (1960); Meridian Mattress Factory, Inc. v. Morris, 239 Miss. 792, 125 So. 2d 533 (1960).

A causal connection between the employment and the injury or death may be found when the outset of a heart attack occurs while the employee is about his work. Russell v. Sohio S. Pipe Lines, 236 Miss. 722, 112 So. 2d 357 (1959).

A conflict in medical testimony as to whether an accidental burn suffered by the claimant while engaged in his duties together with the resultant anticipated treatment thereof was causally related to, and precipitated, the claimant's heart attack only made an issue of fact to be decided by the attorney-referee and the commission. Harper Foundry & Mach. Co. v. Harper, 232 Miss. 873, 100 So. 2d 779 (1958).

It was for the determination of the referee and workmen's compensation commission as to whether or not wielding a paint brush for 9 or 10 hours a day with 1 hour out for lunch would constitute an unusual exertion or strain so as to bring about or contribute to the employee's death from coronary thrombosis about 4 hours after he had left the job and thus constitute a compensable injury under the Workmen's Compensation Law. Dillon v. Gasoline Plant Constr. Corp., 222 Miss. 10, 75 So. 2d 80 (1954).

25. — —Benefits awarded.

Where a 60-year old employee suffered several fractures to his hip in addition to compression of his L-4 vertebra and could no longer withstand the duties of longhaul trucking, ample evidence existed to support the Mississippi Workers' Compensation Commission's finding that he suffered a loss of wage earning capacity of $ 400 per week. The undisputed testimony demonstrated that he earned half of his regular salary as a long-haul truck driver while driving short hauls or working in the loading and packing divisions, and that he had sought light duty work from both his employer and his union, but that none was offered; thus, an award of permanent partial disability benefits was proper. Alumax Extrusions, Inc. v. Hankins, 902 So. 2d 586 (Miss. Ct. App. 2004).

Benefits were properly awarded where there was no credible medical opinion testimony to the effect that employee's death, even assuming it to have been the result of a heart attack, was not caused at least in part by his work activities. Road Maintenance Supply, Inc. v. Dependents of Maxwell, 493 So. 2d 318 (Miss. 1986).

A causal connection existed between the death of an employee who suffered a fatal heart attack while driving a truck along a highway and his employment where the evidence established that his heart was seriously impaired by a childhood attack of rheumatic fever, that he had nearly died from another heart attack which had occurred approximately a month prior to his death, and his physician testified that any activity on the part of the decedent could very likely have contributed to his death. Leake County Coop. (A.A.L.) v. Dependents of Barrett, 226 So. 2d 608 (Miss. 1969).

Where decedent, secretary-manager of a state association of insurance agents, shown to be a perfectionist, easily upset, high-strung and nervous, under constant physical and emotional stress, was found dead in bed in his hotel room as the result of a heart attack following a day spent participating in a convention which he attended as a part of his duties, there was sufficient and substantial evidence to sustain a conclusion that his death was causally connected with his work and was brought on by his physical and emotional stress and strain in the performance of his duties; and his dependents were entitled to compensation, subject to apportionment on account of a pre-existing infirmity. Mississippi Ass'n of Ins. Agents, Inc. v. Dependents of Seay, 218 So. 2d 413 (Miss. 1969).

Where he had the duty of closing the shop, and sometimes worked overtime, there was a presumption of causal connection between the employment and the death of a shop foreman who was found dead from a heart attack a few minutes later than the normal Saturday shop closing time, and this presumption was not eliminated by the 1960 amendment to subsection (9) of Code 1942, § 6998-02 [now subsection (i) of Code 1972, § 71-3-3] requiring that incapacity and the extent thereof must be supported by medical findings. L.B. Priester & Son v. Bynum's Dependents, 244 Miss. 196, 142 So. 2d 30 (1962), overruled on other grounds, Wilson v. Mississippi Emp. Sec. Comm'n, 643 So. 2d 538 (Miss. 1994).

Award of compensation for death of a garment factory employee from heart failure may be found connected with work where there is medical testimony that anything the employee might do would have aggravated her condition. I.B.S. Mfg. Co. v. Dependents of Cook, 241 Miss. 256, 130 So. 2d 557 (1961).

A coronary thrombosis with which a bookkeeper was seized while at work may be found to have been connected therewith where there was evidence that he had occasion to go up a flight of 19 steps during the morning, had worked until 8 o'clock on the evening before, and that absence of his superiors on the day in question may have increased his duties. Meridian Mattress Factory, Inc. v. Morris, 239 Miss. 792, 125 So. 2d 533 (1960).

Where the testimony of heart specialist testifying on behalf of claimants and the employer and its insurance carrier clearly showed that regular work such as deceased was doing as the sole attendant of a busy filling station would aggravate the deceased's heart condition, the conclusion of the workmen's compensation commission that complainants had failed to prove that the death of the deceased arose out of and in the course of his employment was against the weight of the evidence. Lewis v. Trackside Gasoline Station, 233 Miss. 663, 103 So. 2d 868 (1958).

Where it appeared that a mechanic, who had a pre-existing heart ailment, suffered a fatal attack while driving to a nearby farm to repair a cotton picker as directed by the shop foreman, testimony of lay witnesses and a medical expert, who appeared to be of the opinion that the heart attack which the deceased suffered was probably precipitated by the work that he was performing, was sufficient to justify an award to claimants, although another medical expert had testified that in his opinion there was no causal relationship between the deceased's employment during the day and his death. Goodnite v. Farm Equip. Co., 234 Miss. 342, 103 So. 2d 391 (1958), corrected on other grounds, 234 Miss. 356, 106 So. 2d 383 (1958), error overruled, 234 Miss. 360, 106 So. 2d 683 (1958).

Medical testimony supported the finding that an accidental burn suffered by the claimant while engaged in his duties together with the resultant and anticipated treatment thereof was causally related to, and precipitated, the claimant's heart attack. Harper Foundry & Mach.

Co. v. Harper, 232 Miss. 873, 100 So. 2d 779 (1958).

Under the evidence, including medical testimony, the attorney-referee and the commission properly found that the activities of the deceased as a butcher or market man in the meat department of the employer's store caused the deceased's fatal heart attack, and it was not necessary that the claimants show that the deceased had had a pre-existing heart condition or other physical infirmity which could have been aggravated by the work of the deceased. Pennington v. Smith, 232 Miss. 775, 100 So. 2d 569 (1958).

The commission's finding that manual labor performed by a worker in the course of his employment with a lumber company was a precipitating cause of the worker's death due to coronary thrombosis was sustained by evidence, consisting substantially of the response of a medical specialist in cardiology and internal medicine to hypothetical questions. Lee v. Haltom Lumber Co., 230 Miss. 655, 93 So. 2d 641 (1957).

Where the weight of the evidence established that claimant's heart attacks came upon him while he was in the performance of the duties of his employment, which caused physical strain and exertion, and it was undisputed that he was presently disabled from the performance of the work in which he was engaged at the time he suffered the attacks, the workmen's compensation commission's finding, under conflicting medical testimony, that there was a causal connection between the claimant's heart attacks and his work was affirmed. Ingalls Shipbuilding Corp. v. Dickerson, 230 Miss. 110, 92 So. 2d 354 (1957).

26. — —Benefits denied.

Where a deceased workman, retained by a shellfish processing company to do odd jobs, was observed doing no more than moving about and sitting down on the day of his death before he suffered an apparent myocardial infarction, and there was no evidence to show that he "over-extended" himself, and in fact medical opinion testimony was to the contrary, there was sufficient evidence to rebut the presumption of causal connection with employment, and the commission was justified in its conclusion that the death was not compensable. Hungerford v. Southern Shell Fish Co., 230 So. 2d 59 (Miss. 1969).

Where it was not shown that employee had devoted any part of his time on the date of death to the duties of his employment, the evidence was insufficient to show that death at home in bed from myocardial infarction arose out of his employment as office manager. Moon's Dependents v. Erwin Mills, Inc., 244 Miss. 573, 145 So. 2d 465 (1962).

Evidence held to warrant conclusion that death from coronary occlusion was not service-connected. Itawamba Mfg. Co. v. Christian's Dependents, 244 Miss. 587, 145 So. 2d 161 (1962).

Where it was not shown that an employee's exertion in and about the duties of his employment contributed to or precipitated the heart attack which resulted in his death, the commission was not in error in denying a claim for compensation. Rushing v. Water Valley Coca Cola Bottling Co., 232 Miss. 338, 98 So. 2d 870 (1957).

Commission's order denying compensation payments for the decedent's death caused by heart attack, which was predicated upon the ground that death was not causally related to the activities of his employment, was affirmed, where there was abundant medical evidence in support thereof. Halbert v. Lamar Adv. Agency, 231 Miss. 437, 95 So. 2d 535 (1957).

In a workmen's compensation proceeding for death benefits, evidence sustained the commission's finding that the death of an employee caused by a heart condition was not attributable to the work of the employee's employment, and, thus, not compensable. Freeman v. Mississippi Power & Light Co., 230 Miss. 396, 92 So. 2d 658 (1957).

27. —Cerebral or vascular accidents.

Substantial evidence supported the commission's finding that there was a causal connection between the employee's stooping and lifting a box weighing 60 to 70 pounds and the cerebral hemorrhage which he suffered the following day. Walker Mfg. Co. v. Pickens, 206 So. 2d 639 (Miss. 1968).

In view of medical testimony, the finding of the workmen's compensation commission and the circuit court that there was no causal connection or relationship between the decedent's employment duties and the rupture of the aneurysm causing his death was not supported by substantial evidence. Payton's Dependent v. Armstrong Tire & Rubber Co., 250 Miss. 407, 165 So. 2d 336 (1964).

Evidence held to warrant findings that death, in hotel room of traveling salesman who suffered from hypertension, chronic bronchitis and high blood pressure, was not connected with his employment. Moore v. Hederman Bros., 240 Miss. 358, 127 So. 2d 647 (1961).

A finding that the death of a shipyard worker who became ill while operating a pneumatic chipper was not connected with his employment is warranted where medical evidence was that he died of a rupture of a probable congenital intracranial aneurysm. Druey v. Ingalls Shipbuilding Corp., 237 Miss. 277, 114 So. 2d 772 (1959).

Claimant, a 60-year-old female office worker whose duties were both executive and clerical, shown by the evidence to be a perfectionist, irritable and high tempered, suffering from extreme hypertension and with a history of two previous strokes, who suffered a cerebral thrombosis while at work, was entitled to compensation on the basis that the work she performed in the course of her employment, and the manner in which she performed it, aggravated her hypertension and was one of the factors which contributed to the attack which caused her disability. Insurance Dep't v. Dinsmore, 233 Miss. 581, 104 So. 2d 296 (1958).

Where the truck driver accidentally lacerated his leg on June 26, 1954, causing considerable bleeding, which continued to some extent even after medical attention, and following his release by the doctor to return to work, on July 5, 1954, the employee reported to work on July 9, 1954, while suffering from dizzy spells, and died on July 16th, 1954, as result of bleeding to death from a massive gastrointestinal hemorrhage and malignant hypertension, the attorney-referee's finding that death was not related to the injury of June 26th, the workmen's compensation commission's order affirming the finding, as well as the circuit court's affirming order, was not supported by substantial evidence and would be reversed. Williams v. Vicksburg Whsle. Poultry Co., 233 Miss. 384, 102 So. 2d 378 (1958).

Contention that there was no causal connection between claimant's work and his stroke, but that it was brought on by horseplay in which the claimant was aggressor, was not sustained by evidence that the claimant grabbed at the leg or pants leg of his coworker to keep from falling when the attack came on him, and the uncontradicted testimony of two doctors was to the effect that such act on the part of the claimant was not sufficiently strenuous to bring on or precipitate the claimant's attack. Prince v. Nicholson, 229 Miss. 718, 91 So. 2d 734 (1957).

In a workman's compensation proceeding for a death benefit, evidence on the issue of whether exertion which was caused by employee's stooping and bending to pick tung nuts from the ground had contributed to employee's high blood pressure so as to precipitate a cerebral hemorrhage, did not justify a denial of claim for compensation. Cowart v. Pearl River Tung Co., 218 Miss. 472, 67 So. 2d 356 (1953).

Where exertion contributes to, aggravates or accelerates high blood pressure so as to precipitate accident complained of, the claim is compensable. Cowart v. Pearl River Tung Co., 218 Miss. 472, 67 So. 2d 356 (1953).

28. —Mental or nervous disease.

A claimant failed to make the requisite showing that her mental condition was causally connected to her employment where 2 doctors testified that the claimant had suffered from psychological disorders prior to the incident alleged to have caused her mental injury, the Workers' Compensation Commission found the testimony of another doctor, who diagnosed the claimant as having severe post-traumatic stress disorder and major depression with some psychotic symptoms, to be unconvincing, and the incident alleged to have caused the claimant's mental injury-a private meeting with her supervisor during which the supervisor threatened to fire her-was not an "untoward event." Bates v. Countrybrook Living Ctr., 609 So. 2d 1247 (Miss. 1992).

The evidence was sufficient to support the Workers' Compensation Commission's finding that an employee's mental disability was caused by a deliberate course of conduct by his employer and that there was nothing in his psychological background to suggest a pre-existing personality disorder, so that the stresses to which the employee was subjected were "more than the ordinary incidents of employment" and were "untoward events or unusual occurrences" culminating in his subsequent disability, where a psychiatrist who treated the employee for over 2 years testified that the employee was psychologically disabled and that his work played a significant part in causing it, and testimony from the employee, the employee's wife, and fellow employees established a protracted pattern by the employer to put pressure and stress upon the employee. Borden, Inc. v. Eskridge, 604 So. 2d 1071 (Miss. 1991).

In order to be compensable, a mental injury, unaccompanied by physical trauma, must have been caused by something more than the ordinary incidents of employment. Fought v. Stuart C. Irby Co., 523 So. 2d 314 (Miss. 1988).

Mental injury of worker unaccompanied by physical trauma is not directly linked to untoward event, unusual occurrence, accident or injury incident to employment, as required for worker to be entitled to worker's compensation benefits, where worker claims that mental injury results from termination of worker due to business conditions eliminating need for worker's employment; if worker were entitled to benefits at all, it would only be to apportioned benefits if worker has long history of mental and emotional disorders prior to termination. Smith & Sanders, Inc. v. Peery, 473 So. 2d 423 (Miss. 1985).

A claimant who was suffering from psychophysiological muscle spasms following physical injuries to his back and leg sustained as a result of a vehicular collision which occurred in the course of his employment was entitled to receive temporary total disability benefits where the evidence showed that the accident triggered his disability. Phillips v. Skinner, 219 So. 2d 167 (Miss. 1969).

Pain without organic cause that is no longer due to the effects of claimant's back injury from which he has fully recovered is not due to the effects of the injury but is due to claimant's disturbed mental state which arises from other unconnected factors and is not compensable. Merchants Co. v. Moore, 197 So. 2d 791 (Miss. 1967).

A claimant asserting that a mental or nervous disease has resulted from an industrial accident must show the causal connection between the accident and the psychoneurosis by clear evidence, and where the evidence showed that the claimant truck driver had, as a consequence of a highway collision, suffered an emotional trauma which made it impossible thereafter to engage in that occupation, he was entitled to compensation benefits. Miller Transporters, Ltd. v. Reeves, 195 So. 2d 95 (Miss. 1967).

That the claimant had what was described as an epileptic seizure while driving an automobile in the course of his employment, resulting in an accident in which he was injured, does not affect his right to compensation, for although the seizure was personal to him the injury arose from the risks of travel. Aetna Fin. Co. v. Bourgoin, 252 Miss. 852, 174 So. 2d 495 (1965).

Where the claimant suffered from a depressive reaction brought about as the result of losing his job rather than as the result of an industrial accident he was not entitled to recover compensation, for the rule is that in order for a claim for compensation to be based on a mental or nervous disease an industrial accident must be established to bring it within the realm of probability, and causal connection with the accident must be proved by clear evidence. Powers v. Armstrong Tire & Rubber Co., 252 Miss. 717, 173 So. 2d 670 (1965).

Incapacity to work because of emotional disturbance not shown to be connected with employment is not compensable. Johnson v. Gulfport Laundry & Cleaning Co., 249 Miss. 11, 162 So. 2d 859 (1964).

29. —Other disabilities.

The evidence was sufficient to support the Workers' Compensation Commission's finding that a claimant's hypertension was work-related, thus obliging the claimant's former employer to pay for medical expenses incurred by the claimant for periodic checkups for his hypertensive condition as ordered by his treating physician, where the claimant began to experience tension, anxiety and stomach problems, which the physician diagnosed as hypertension, during the time the claimant worked for the employer, and the physician concluded that the claimant's job caused him to experience significant stress which aggravated his hypertensive condition so as to require him to take a medical leave of absence. Berry v. Universal Mfg. Co., 597 So. 2d 623 (Miss. 1992).

The evidence was sufficient to support a finding by the Workers' Compensation Commission that noise at an employee's work site was a contributing, precipitating, or aggravating factor in the production of Meniere's Syndrome, even though the etiology of Meniere's Syndrome is largely unknown, where there was substantial evidence that exposure to high intensity noise for a period of years at the work site contributed to, aggravated or accelerated the employee's condition, and this evidence was not controverted by any direct medical evidence. Georgia-Pacific Corp. v. Gregory, 589 So. 2d 1250 (Miss. 1991).

Where it was shown that the claimant suffered from a mild case of asthma when he began working in 1963, but could ably perform his labor, that he complained of breathing difficulties in 1964, that in 1965 he was treated for emphysema, that he was hospitalized in 1968 for emphysema, and that in 1969, his condition had progressed to the stage where he was advised by doctors to quit his job, it was apparent that such dates would supply the necessary evidence for proving that claimant's gradual injury occurred within a reasonably definite and not too remote period of time. Boyd v. State, 291 So. 2d 560 (Miss. 1974).

The fact that a claimant's chest pain began when she lifted a ten-pound sack of potatoes while working at a market, and medical testimony that the pain she experienced was consistent with a herniated thoracic disc, as indicated in X-ray reports, together constituted sufficient medical evidence of a causal connection between the claimant's injury and her subsequent disability, despite other testimony suggesting that a rupture of the disc would not have occurred from the lifting of such a weight unless there was a preexisting disease. Better Living Mkts., Inc. v. Smith, 241 So. 2d 152 (Miss. 1970).

In the absence of the establishment of a causal relationship between claimant's fall from a ladder and an ulcerative colitis condition which subsequently developed, his claim for total and permanent disability was denied. Contract Trucking Co. v. May, 254 Miss. 925, 183 So. 2d 488 (1966).

Evidence held sufficient to warrant finding of causal relation between injury and death. Futorian-Stratford Furn. Co. v. Oswalt's Dependents, 249 Miss. 35, 162 So. 2d 645 (1964).

Evidence of medical experts held to warrant commission in finding that inability of claimant to work was attributable solely to a condition not related to his injury. Bates v. Merchants Co., 249 Miss. 174, 161 So. 2d 652 (1964).

Evidence held to show that knee disability was connected with injury to shin. Kennedy v. Williams-McWilliams Indus., Inc., 247 Miss. 595, 156 So. 2d 806 (1963).

Evidence, including medical testimony, established that the fact that claimant's body became wet with sodium hypochlorite solution had no causal connection in bringing about the cataract condition of his eyes. Sullivan v. C. & S. Poultry Co., 234 Miss. 126, 105 So. 2d 558 (1958).

Evidence, including medical testimony, sustained findings that the paralysis suffered by claimant was the result of falling while performing his duties, rather than resulting from a brain hemorrhage wholly disconnected from his work. Nicholas Co. v. Dodson, 232 Miss. 569, 99 So. 2d 666 (1958).

Where a claimant, who had received an injury in an accident arising out of and within the scope of his employment, did not lose as much as a week's time from his work, and did not file for compensation benefits within two years of the date of injury, and there was only a mere possibility of a causal connection between the accident and claimant's condition, a denial of compensation benefits was affirmed. Welborn v. Joe N. Miles & Sons

Lumber Co., 231 Miss. 827, 97 So. 2d 734 (1957).

Evidence sustained findings by the workmen's compensation commission and lower court that the claimant's congenital spondylolisthesis condition was not the result of claimant's lifting heavy objects or performing manual labor for his employer. Thompson v. Armstrong Cork Co., 230 Miss. 730, 93 So. 2d 831 (1957).

Evidence was sufficient to sustain the workmen's compensation commission's finding that claimant's cataracts were either caused by the absorption of radiant energy and infra-red rays, or that the cataracts were aggravated by such absorption so as to accelerate the onset of his disability due to blindness. Ingalls Shipbuilding Corp. v. Dickerson, 230 Miss. 110, 92 So. 2d 354 (1957).

Workmen's compensation commission's finding that there was no causal connection between claimant's disability and an injury which occurred in the course of her employment was supported by substantial evidence, including medical testimony fairly demonstrating that neither the injury nor the operation was the probable cause of the disabling pain, and further showing that the probable cause thereof was a pre-existing disease. Malley v. Over The Top, Inc., 229 Miss. 347, 90 So. 2d 678 (1956).

In a workman's compensation proceeding where a referee made an erroneous statement that in his opinion an employee whom he awarded compensation for contact dermatitis caused by her work as dishwasher, was given a new kind of soap or washing powder to use, was not ground for reversal of an award, inasmuch as whether the soap which the claimant was required to use was a new kind of soap or not was immaterial. Christopher v. City Grill, 218 Miss. 638, 67 So. 2d 694 (1953).

30. Pre-existing disease or infirmity.

Apportionment of recovery was not appropriate, where the ultimate cause of the decedent's fatal heart attack remained unknown. Miss. Baptist Med. Ctr. v. Dependents of Mullett, 856 So. 2d 612 (Miss. Ct. App. 2003).

Evidence, though conflicting, was sufficient to support Workers' Compensation Commission's finding that claimant engulfed in ammonia gas at work suffered compensable injury, but Commission erred in finding that he suffered permanent and total disability, where evidence revealed that pre-existing condition, emphysema, contributed to lung ailment. Reichhold Chem., Inc. v. Sprankle, 503 So. 2d 799 (Miss. 1987).

A claimant who has once been adjudged totally and permanently disabled and who has received benefits therefor, but who thereafter resumes gainful employment and becomes injured while so engaged, is not precluded from receiving benefits for loss of wage earning capacity arising out of the later injury; however, a claimant may not pyramid benefits and receive in excess of the maximum weekly benefit provided by statute during any one period. Observa-Dome Lab., Inc. v. Ivy, 302 So. 2d 862 (Miss. 1974).

Although claimant's prior asthmatic condition may have played a part in his ultimate disability, it is well settled that where a claimant's employment contributes to his condition, the injury is compensable. Boyd v. State, 291 So. 2d 560 (Miss. 1974).

The burden is upon the employer to prove that there was a preexisting disease or lesion which was a contributing factor in causing the injury or death. Mississippi Research & Dev. Ctr. v. Dependents of Shults, 287 So. 2d 273 (Miss. 1973); Stuart Mfg. Co. v. Walker, 313 So. 2d 574 (Miss. 1975).

The signing of an application for group insurance benefits, is a factor to be considered in determining whether an injury was work connected or arose out of a pre-existing condition, but it is not per se a bar to a claim under the Workmen's Compensation Law where the facts are in dispute. Central Elec. & Mach. Co. v. Shelton, 220 So. 2d 320 (Miss. 1969).

A finding by the commission that a pre-existing condition of arthritis and bursitis was a material contributing factor in a claimant's permanent partial disability of his right arm resulting as a consequence of a fall from a ladder was supported by ample evidence. Walters Bros. Bldrs. v. Loomis, 187 So. 2d 586 (Miss. 1966).

Where widow-claimant has asserted and proved as an integral and indispensable part of her claim that the employee's death as a consequence of a ruptured vascular aneurysm aorta was, in part, the consequence of a pre-existing condition, it was not necessary that the employer-carrier plead or prove as an affirmative defense the existence of such pre-existing condition. Armstrong Tire & Rubber Co. v. Payton, 186 So. 2d 217 (Miss. 1966).

31. —Aggravation, acceleration, or contribution to pre-existing condition.

Award of permanent total disability benefits to the employee for 450 weeks was proper in part because no medical evidence was presented that the employee's heart problems were a material contributing factor to her permanent restrictions as to lifting, standing, or sitting. Adolphe Lafont USA, Inc. v. Ayers, 958 So. 2d 833 (Miss. Ct. App. 2007).

A finding by the Workers' Compensation Commission that an employee's pre-existing heart condition was aggravated by exposure to chemicals in the workplace rendering him totally and permanently disabled was not clearly erroneous where the employee was exposed to numerous amounts of volatile chemicals under poor ventilation conditions for a period of 29 years and the testimony before the Commission revealed that the chemicals would enter the lungs and bloodstream and could have had an adverse effect upon the employee's heart. Mitchell Buick, Pontiac & Equip. Co. v. Cash, 592 So. 2d 978 (Miss. 1991).

The Workers' Compensation Commission's findings that a truck driver sustained a compensable injury and that the repeated trauma of his work aggravated a pre-existing non-work-related condition were supported by substantial evidence where the worker's treating physician and the physician for the employer who conducted a physical examination required by the Department of Transportation had released the worker to return to work following treatment for a non-work-related back injury and the treating physician testified that the worker had a "chronically sore joint in the back that was apparently being aggravated by the nature of his work as a long-distance truck driver." Miller Transporters, Inc. v. Guthrie, 554 So. 2d 917 (Miss. 1989).

Where medical testimony left no room for doubt that trauma resulting when a metal door slipped from the claimant's hands and struck him on his jaw, aggravated the malignant condition of the claimant's cancerous tumor involving a salivary gland, a proper claim for workmen's compensation was established. Tiller v. Southern U.S.F., Inc., 246 So. 2d 530 (Miss. 1971).

Where the claimant had a pre-existing condition of pyelitis and prostatitis and sustained an "on the job" aggravation and, after treatment, his condition reverted to the same as it was prior to the injury, though pre-aggravated, the employer and carrier were not responsible for any compensation or medical benefits. Miller Transporters, Ltd. v. Dean, 254 Miss. 1, 179 So. 2d 552 (1965).

A claimant suffering from cystic emphysema who, as a consequence of inhaling plastic dust and chemical fumes in the course of his employment, suffered a spontaneous pneumothorax was entitled to receive temporary total disability payments for the period that his lung remained collapsed, for his condition had been aggravated by his employment. Presto Mfg. Co. v. Chandler, 252 Miss. 36, 172 So. 2d 431 (1965).

When a pre-existing disease or infirmity of workmen is aggravated by a work-connected injury, or if the second injury combines with a prior disease or infirmity and the combination produces disability, the resulting disability is compensable. Scott v. Brookhaven Well Serv., 246 Miss. 456, 150 So. 2d 508 (1963); M.T. Reed Constr. Co. v. Garrett, 249 Miss. 892, 164 So. 2d 476 (1964).

Where the work of the employee aggravates a pre-existing disease or condition the resulting injury is compensable. I.B.S. Mfg. Co. v. Dependents of Cook, 241 Miss. 256, 130 So. 2d 557 (1961).

Death during working hours from a cerebral hemorrhage is compensable where the activities and duties of the employment aggravated, accelerated, or combined with pre-existing disease to produce death. Mississippi Hwy. Patrol v. Neal's Dependents, 239 Miss. 505, 125 So. 2d 544 (1960).

When a pre-existing disease or infirmity of an employee is aggravated, lighted up or accelerated by a work-connected injury, or if the injury combines with the disease to produce disability, the resulting disability is compensable; but when the effect of the injury has subsided, subsequent disability attributable solely to the disease or infirmity is not compensable. Rathborne, Hair & Ridgeway Box Co. v. Green, 237 Miss. 588, 115 So. 2d 674 (1959).

Work need not be sole cause of injury, which is compensable if it aggravated, accelerated or combined with a disease or infirmity to produce disability or death. Insurance Dep't v. Dinsmore, 233 Miss. 581, 104 So. 2d 296 (1958); Central Elec. Power Ass'n v. Hicks, 236 Miss. 378, 112 So. 2d 230 (1959); Shivers v. Biloxi-Gulfport Daily Herald, 236 Miss. 303, 110 So. 2d 359 (1959).

A pre-existing disease or infirmity of an employee does not disqualify a claim if the employment aggravated, accelerated or combined with the disease or infirmity to produce a death or disability for which compensation is sought, and it is not necessary to show that the exertion which concurred in precipitating the harm was in itself unusual or beyond the routine of the employment, provided that relation is shown. Lewis v. Trackside Gasoline Station, 233 Miss. 663, 103 So. 2d 868 (1958).

Where it was manifest from a composite reading of the medical testimony, together with the fact of the employee's recent heart attack and the employment exertions of the deceased as a log scaler, that the deceased's employment and work on the day of his death, when he had scaled three truckloads of logs, aggravated, precipitated and contributed to his death, compensation was awarded. Poole v. R.F. Learned & Son, 234 Miss. 362, 103 So. 2d 396 (1958).

Where there was medical evidence showing that mental and emotional strain of state employee's duties, which were both clerical and executive, aggravated the employee's pre-existing hypertension and that such aggravation was a factor contributing to the employee's disability, the disability was compensable. Insurance Dep't v. Dinsmore, 233 Miss. 581, 104 So. 2d 296 (1958).

If the work of the deceased either aggravates a pre-existing condition or precipitates a heart attack, the claim is compensable. Pennington v. Smith, 232 Miss. 775, 100 So. 2d 569 (1958).

Where it is shown that an employee has died from a heart attack, in order to make out a prima facie case for compensation, the claimants must show, in addition to the heart ailment, that the work aggravated, accelerated or precipitated the heart attack, and that the two conditions together caused the death of the deceased. Rushing v. Water Valley Coca Cola Bottling Co., 232 Miss. 338, 98 So. 2d 870 (1957).

Where it was shown that claimant's condition, following an operation for a pre-existing disease, was aggravated by the strain caused by her industrial employment, and that as a result she was unable to do the work which she formerly did, claimant was entitled to recover for permanent partial disability. King v. Westinghouse Elec. Corp., 229 Miss. 830, 92 So. 2d 209 (1957).

While generally a pre-existing disease or infirmity does not disqualify a claim under the "arising out of employment" requirements of the Workmen's Compensation Law, if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the death or disability for which compensation is sought, in hernia cases effect must be given to Code 1942, § 6998-12. Fagan v. Wells-Lamont, Inc., 228 Miss. 660, 89 So. 2d 632 (1956).

Medical testimony, as well as other enumerated circumstances, constituted substantial evidence that the trauma to the deceased employee's back, caused by an injury arising in the course of his employment, lighted up, aggravated, accelerated or combined with a pre-existing cancerous condition to produce his death. Dixie Pine Prods. Co. v. Dependents of Bryant, 228 Miss. 595, 89 So. 2d 589 (1956).

Where a pre-existing disease or infirmity is aggravated, accelerated, or contributed to and precipitated by the work in which the employee is engaged, the claim is compensable under the Workmen's Compensation Law upon the theory that in such event the injury or death occurred during the course of, or arising out of, the employment. Southern Eng'g & Elec. Co. v. Chester, 226 Miss. 136, 83 So. 2d 811 (1955), corrected, 226 Miss. 151, 84 So. 2d 535 (1956).

As bearing on the question whether pre-existing heart disease causing death was aggravated by employee's work or emotional strain involved in painting, failure of referee to permit proof of medical or family history of the employee as it related to heart disease was not error where claimant failed to dictate for record particular facts which would enable court on appeal to determine whether such facts would have a bearing on the question at issue. Dillon v. Gasoline Plant Constr. Corp., 222 Miss. 10, 75 So. 2d 80 (1954).

A pre-existing disease or infirmity of the employee does not disqualify a claim under the "arising out of employment" requirement if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the death or disability for which compensation is sought. East v. Pigford Bros. Constr. Co., 219 Miss. 121, 68 So. 2d 294, 70 So. 2d 880 (1953); Tate v. Dr. Pepper Bottling Co., 220 Miss. 311, 70 So. 2d 602 (1954); Dixie Pine Prods. Co. v. Dependents of Bryant, 228 Miss. 595, 89 So. 2d 589 (1956); King v. Westinghouse Elec. Corp., 229 Miss. 830, 92 So. 2d 209, 93 So. 2d 183 (1957).

In compensation case involving injury to operator of electric chisel in shipbuilding process, where partial paralysis resulted when pre-existing malformation of blood vessels in back was aggravated by pressure of back against metal bar, augmented by recoil of automatic chisel, the injury was accidental within the contemplation of the Workmen's Compensation Law. Ingalls Shipbuilding Corp. v. Byrd, 215 Miss. 234, 60 So. 2d 645 (1952).

32. —As bar to compensation.

Evidence that a workman's death occurred several hundred miles from his place of employment and 19 months after a back injury sustained by him in the course of his employment, and testimony of an expert witness that the workman did not die as a result of a heart condition, sustained a finding of the commission that the back injury with its resulting surgery did not aggravate, accelerate, or contribute to the pre-existing heart condition which brought about the workman's death. Southern Brick & Tile Co. v. Clark, 247 So. 2d 692 (Miss. 1971).

Plaintiff who had a pre-existing ruptured disk and suffered injury in his lower back while driving a truck for his employer and the injury resulted when he coughed or sneezed, he was not entitled to compensation, for the cough or sneeze which caused the injury was completely unrelated to his employment and the accident, therefore, did not arise out of his employment. Malone & Hyde of Tupelo, Inc. v. Hall, 183 So. 2d 626 (Miss. 1966).

Where the evidence revealed that the claimant's pre-existing atherosclerosis was the predisposing cause of his massive cerebral hemorrhage, and that if it had been a result of his exertion on the job the stroke would have occurred almost immediately rather than some 12 hours later as it did, compensation was properly denied. Ingalls Shipbuilding Corp. v. McNeal, 251 Miss. 573, 170 So. 2d 562 (1965).

In view of Code 1942, § 6998-12, claimant's failure to prove that there had been no descent or protrusion of her incisional hernia prior to the accident for which compensation was claimed barred recovery benefits for the aggravation of a pre-existing hernia. Fagan v. Wells-Lamont, Inc., 228 Miss. 660, 89 So. 2d 632 (1956).

33. —Not bar to compensation.

A claimant, who, in seeking employment failed to divulge that she had suffered a back injury in 1969 resulting in disc surgery, was not estopped from receiving benefits for a 1977 back injury, in absence of evidence showing a causal relationship of the 1969 injury to the 1977 injury. Emerson Elec. Co. v. McLarty, 487 So. 2d 228 (Miss. 1986).

That a claimant, suffering from contact dermatitis, worked for his employer under three successive workmen's compensation insurers and gradually became worse over the years did not entitle the third insurer to contribution on the ground of a pre-existing condition. Thyer Mfg. Co. v. Mooney, 252 Miss. 629, 173 So. 2d 652 (1965).

Compensation held properly allowed for permanent partial disability resulting from the lighting up of a prior latent condition by an accidental injury. Rigdon v. General Box Co., 249 Miss. 239, 162 So. 2d 863 (1964).

Compensation was awarded for death of a porter at a motel, where there was evidence that his condition was aggravated by his employment. El Patio Motor Court, Inc. v. Long's Dependents, 242 Miss. 294, 134 So. 2d 437 (1961).

Compensation should have been awarded for the death of a member of an electric power company's maintenance crew, who had hypertensive cardiovascular disease and who, after a day's work of heavy physical labor during which he experienced pains in the cardiac region, went directly to his physician's office and within an hour died of a heart attack. Central Elec. Power Ass'n v. Hicks, 236 Miss. 378, 112 So. 2d 230 (1959).

Where, as a result of strain of carpenter's helper in cranking motor as an incident of his work, there was a protrusion of pre-existing hemorrhoids, this was an accidental injury for which compensation was payable notwithstanding the fact that the pre-existing infirmity of the employee combined with the strain of employment brought about the disabling condition. East v. Pigford Bros. Constr. Co., 219 Miss. 121, 68 So. 2d 294, 70 So. 2d 880 (1953).

Where a claimant had a pre-existing and apparently cogenital pilonidal cyst in the lower part of backbone, and this was brought to light and aggravated by constant riding which the claimant was required to do in carrying out his duties as a route salesman, the injury was compensable. Tate v. Dr. Pepper Bottling Co., 220 Miss. 311, 70 So. 2d 602 (1954).

34. —Apportionment.

Apportionment of recovery was not appropriate, where the ultimate cause of the decedent's fatal heart attack remained unknown. Miss. Baptist Med. Ctr. v. Dependents of Mullett, 856 So. 2d 612 (Miss. Ct. App. 2003).

In a case involving an employer's bad faith failure to pay worker's compensation benefits, it was harmless error to allow an employee to cross-examine a witness about the apportionment statute, Miss. Code Ann. § 71-3-7(b), where the witness did not have the authority to determine when a claimant had reached maximum medical recovery. Miss. Power & Light Co. v. Cook, 832 So. 2d 474 (Miss. 2002).

Mental injury of worker unaccompanied by physical trauma is not directly linked to untoward event, unusual occurrence, accident or injury incident to employment, as required for worker to be entitled to worker's compensation benefits, where worker claims that mental injury results from termination of worker due to business conditions eliminating need for worker's employment; if worker were entitled to benefits at all, it would only be to apportioned benefits if worker has long history of mental and emotional disorders prior to termination. Smith & Sanders, Inc. v. Peery, 473 So. 2d 423 (Miss. 1985).

The minimum payment of $25 per week provided in § 71-3-13 may not be reduced by the apportionment provided in § 71-3-7 except in partial dependency cases. Thus, a partially disabled employee was entitled to weekly payments of $25 rather than $12.50, even though her permanent partial disability was due 50 percent to her work-related injury and 50 percent to a preexisting condition. Cross Mfg., Inc. v. Lowery, 394 So. 2d 887 (Miss. 1981).

The issue of whether this section was applicable to a claimant who injured his back in the course of his employment as an insurance adjuster, but who had also suffered from serious lower back problems in the past, could not be resolved where there had not yet been a determination as to the date of claimant's maximum medical recovery. Azwell v. Franklin Assocs., 374 So. 2d 766 (Miss. 1979).

Where there is some evidence to support it, apportionment is mandatory, regardless of whether or not it was pled. Boyd v. State, 291 So. 2d 560 (Miss. 1974).

It is not necessary that a pre-existing infirmity produce industrial disability prior to an aggravating or supplemental injury, or that it be such as normally would result in disability in time because of the normal progress of the disease, nor is it necessary that the prior infirmity itself have been directly aggravated; the test of the applicability of the apportionment statute is whether the prior infirmity contributed to the employee's disability. International Paper Co. v. Tiffee, 246 So. 2d 535 (Miss. 1971).

Normal degenerative actions accompanying age cannot be classed as "disease" within the meaning of the apportionment provisions of the Workmen's Compensation Law. Weaver Pants Co. v. Duncan, 231 So. 2d 489 (Miss. 1970).

In an action on a claim for workmen's compensation benefits, evidence that the claimant, while at work, slipped and sustained pain to his back, which necessitated his taking some days from work, and that upon his return, he again hurt his back picking up a heavy object, sustained the commission's findings that a bulge or herniated disc and a resultant disability arose out of and in the course of the claimant's employment, notwithstanding other evidence that the claimant prior to these injuries was found to have a degree of degenerative arthritis of some duration, and medical testimony suggesting that at least part of the disability was attributable to the pre-existing degenerative condition. Central Elec. & Mach. Co. v. Shelton, 220 So. 2d 320 (Miss. 1969).

The 1968 amendment incorporated in this section [Code 1942, § 6998-04] the limitations on apportionment established in Cockrell Banana Co. v. Harris (Miss. 1968) 212 So. 2d 581. Delta Millwork, Inc. v. Terry, 216 So. 2d 542 (Miss. 1968).

Apportionment of death benefits should begin from the date of the employee's death, applicable to both weekly and maximum compensation. Mississippi Stationery Co. v. Segal, 214 So. 2d 820 (Miss. 1968).

Apportionment of a disability claim should be applied to weekly and maximum benefits when the claimant has reached maximum medical recovery. Mississippi Stationery Co. v. Segal, 214 So. 2d 820 (Miss. 1968).

To give the apportionment statute the meaning intended by the legislature, maximum benefits, as well as weekly, are to be subjected to apportionment. Cockrell Banana Co. v. Harris, 212 So. 2d 581 (Miss. 1968).

Apportionment of disability payments should start as of the time the claimant has reached maximum medical recovery. Cockrell Banana Co. v. Harris, 212 So. 2d 581 (Miss. 1968).

The date of maximum recovery and the determination of apportionment are questions to be decided by the attorney-referee, subject to review by the full commission; and these are not matters to be determined by the employer or carrier. Cockrell Banana Co. v. Harris, 212 So. 2d 581 (Miss. 1968).

After the date the employee reaches maximum medical recovery, weekly compensation benefits in the language of the statute shall be reduced by that proportion which the pre-existing physical handicap, disease, or lesion contributes to the results following injury. Cockrell Banana Co. v. Harris, 212 So. 2d 581 (Miss. 1968).

Apportionment of the maximum death benefit is implicit in apportionment of weekly benefits. B. & D. Theatres, Inc. v. Davis, 190 So. 2d 845 (Miss. 1966), overruled on other grounds, Cockrell Banana Co. v. Harris, 212 So. 2d 581 (Miss. 1968).

The percentage of contribution of a prior condition to an injury is not ordinarily susceptible of exact proof, and the estimate of the commission that a motion picture projectionist, who suffered a coronary occlusion on the job and died of the resulting myocardial infarction, had a pre-existing atherosclerosis constituting a 25 percent contribution to the condition which caused his death will not be overturned on appeal in the absence of evidence reflecting that the commission abused its discretion. B. & D. Theatres, Inc. v. Davis, 190 So. 2d 845 (Miss. 1966), overruled on other grounds, Cockrell Banana Co. v. Harris, 212 So. 2d 581 (Miss. 1968).

When the effect of a claimant's work-connected injury has subsided, and the injury no longer combines with a pre-existing disease or infirmity to produce disability, any subsequent disability attributable solely to the pre-existing disease or infirmity is not compensable. Lee v. Lumberton Mfg. Co., 198 So. 2d 823 (Miss. 1967); M.T. Reed Constr. Co. v. Garrett, 249 Miss. 892, 164 So. 2d 476 (1964).

Generally it is necessary for the employer to plead and prove the existence of a pre-existing disease or infirmity in order to be able to claim the benefits of an apportionment. Mississippi Tank Co. v. Dependents of Walker, 187 So. 2d 590 (Miss. 1966).

The burden of proof is upon the employer to prove by a preponderance of the evidence all of the factors required by the apportionment statute, and these factors are the existence of a pre-existing handicap, disease or lesion, which is a material contributing factor to the results following injury, and these factors must be shown by medical findings. Bill Williams Feed Serv. v. Mangum, 183 So. 2d 917 (Miss. 1966).

The basic purpose of the apportionment provision is to encourage employers to employ handicapped persons with pre-existing disease or lesion, whom a prospective employer would be reluctant to employ in the absence of the apportionment provision. Thyer Mfg. Co. v. Mooney, 252 Miss. 629, 173 So. 2d 652 (1965).

The reduction in compensation benefits due to the results following injury by a pre-existing handicap, disease or lesion, refers to benefits which the insured employee will not receive at all, not to benefits which will be paid by someone else. Thyer Mfg. Co. v. Mooney, 252 Miss. 629, 173 So. 2d 652 (1965).

Compensation is required to be reduced by the proportion which a pre-existing physical handicap, disease or lesion contributes to the production of the results following the injury. Dillingham Mfg. Co. v. Upton, 252 Miss. 281, 172 So. 2d 766 (1965), but see Cockrell Banana Co. v. Harris, 212 So. 2d 581 (Miss. 1968).

Apportionment on account of a pre-existing injury cannot be made where without basis in pleading and proof. Mississippi Federated Coops. v. Roberts, 248 Miss. 732, 160 So. 2d 922 (1964).

Before an award may be reduced by reason of a pre-existing physical condition, it must be shown by medical findings not only that there was a pre-existing handicap, disease or lesion but also that such condition contributed to the results following the injury. L.B. Priester & Son v. Bynum's Dependents, 247 Miss. 664, 157 So. 2d 399 (1963).

Employer has burden of showing that disability is in part due to pre-existing physical condition. I. Taitel & Son v. Twiner, 247 Miss. 785, 157 So. 2d 44 (1963).

The commission's conclusion as to the degree to which pre-existing disease contributed to the injury will not be set aside by the courts unless not supported by substantial evidence or manifestly wrong. Southeastern Constr. Co. v. Dodson's Dependent, 247 Miss. 1, 153 So. 2d 276 (1963).

The extent to which a demonstrated physical condition contributed to an employee's death is in the sound discretion of the workmen's compensation commission. Southeastern Constr. Co. v. Dodson's Dependent, 247 Miss. 1, 153 So. 2d 276 (1963).

The provision for a proportionate reduction of compensation for disability to which a pre-existing condition has contributed should be construed in a fair manner, equitably and justly. Cuevas v. Sutter Well Works, 245 Miss. 478, 150 So. 2d 524 (1963).

A reduction of compensation under this section [Code 1942, § 6998-04] must be supported by substantial evidence. Cuevas v. Sutter Well Works, 245 Miss. 478, 150 So. 2d 524 (1963).

Under this provision the burden is on the employer and his insurer to establish by a preponderance of evidence a pre-existing condition shown by medical findings to be a material contributing factor in the results following injury, and the proportion of such contribution. Cuevas v. Sutter Well Works, 245 Miss. 478, 150 So. 2d 524 (1963).

35. — —Required.

Mississippi Workers' Compensation Commission did not err when it apportioned an employee's right extremity award, under Miss. Code Ann. § 71-3-7, because the employee's prior injuries prevented her from working in her previous capacity, the employee did not have a latent prior condition, the employee had prior injuries for which she was compensated, and the Commission could have found that those prior injuries were a material contributing factor to her subsequent injuries. Johnson Elec. Auto., Inc. v. Colebrook, 995 So. 2d 791 (Miss. Ct. App. 2008), writ of certiorari denied by 999 So. 2d 374, 2008 Miss. LEXIS 664 (Miss. 2008).

The Workers' Compensation Commission properly apportioned an employee's disabilities between 2 injuries where there was no evidence of a causal connection between the 2 injuries. Cawthon v. Alcan Aluminum Corp., 599 So. 2d 925 (Miss. 1991).

Apportionment of an award of compensation based on the claimant's pre-existing heart condition was proper, even though his pre-existing heart condition caused no pre-injury occupational disability, since the heart attack which left the plaintiff permanently and totally disabled was materially contributed to by his pre-existing obstructive pulmonary disease and his hypertension. Mitchell Buick, Pontiac & Equip. Co. v. Cash, 592 So. 2d 978 (Miss. 1991).

The Workers' Compensation Commission's apportionment of an award of death benefits by ⅔ on the basis of pre-existing health conditions was supported by substantial evidence where the worker, who died of a heart attack arising out of and in the course of his employment, had smoked 3 packs of cigarettes daily since his teenage years and consumed approximately "½ bottle of alcohol" daily for an unspecified number of years, and his family had a history of heart-related problems. Hardin's Bakeries v. Dependent of Harrell, 566 So. 2d 1261 (Miss. 1990).

In work-connected injury cases where the evidence establishes (a) successive injuries experienced by the employee where following the first injury the employee engages in full-time employment for a substantial period of time prior to the second injury; or (b) a preexisting (symptomatic or asymptomatic) condition which causes the employee to experience no pre-injury occupational disability, apportionment may not be ordered. On the other hand, in cases where (a) there is evidence of a medically cognizable, identifiable, symptomatic condition which antedated the injury; and (b) the employee experienced some absence of normal (for him or her) wage earning capacity, then apportionment must be ordered. Stuart's, Inc. v. Brown, 543 So. 2d 649 (Miss. 1989).

Apportionment was proper where claimant's pre-existing infirmity of spondylolisthesis was supported by medical findings. GE Co. v. McKinnon, 507 So. 2d 363 (Miss. 1987).

Apportionment was required where deceased worker's pre-existing epileptic condition was a factor contributing to his death. Chapman, Dependents of v. Hanson Scale Co., 495 So. 2d 1357 (Miss. 1986).

Apportionment should have been ordered under record containing medical evidence that deceased employee had a preexisting heart condition and overwhelming evidence that this preexisting condition was a factor contributing to the employee's death. Road Maintenance Supply, Inc. v. Dependents of Maxwell, 493 So. 2d 318 (Miss. 1986).

Apportionment was required where, prior to the work related injury, claimant had experienced 4 hernias which contributed to his permanent, total disability. Delta Drilling Co. v. Cannette, 489 So. 2d 1378 (Miss. 1986).

Where it was undisputed that deceased had a history of hypertensive vascular disease dating from about 1962, apportionment of benefits should be ordered. Alexander v. Campbell Constr. Co., 288 So. 2d 4 (Miss. 1974).

Where employee died of a job-related heart attack, but a post-mortem examination revealed signs of coronary atherosclerosis which played a part in his death, a reduction of the award by apportionment was required. Mississippi Research & Dev. Ctr. v. Dependents of Shults, 287 So. 2d 273 (Miss. 1973).

Where a claimant had no functional disability before he sustained a transient myocardial ischemia while carrying a water pump and hose weighing about 300 pounds with another worker in the course of his employment, but was permanently disabled, as a result of that injury, from performing the type of work in which he had engaged before the injury, the testimony of the examining physician that the claimant had some degree of pre-existing arteriosclerosis was insufficient to substantiate the commission's finding that the claimant's disability was entirely due to his pre-existing arteriosclerosis, and the claimant was entitled to permanent disability benefits apportioned in accordance with the degree to which his pre-existing infirmity contributed to his disability. Youngblood v. Ralph M. Parsons Co., 260 So. 2d 188 (Miss. 1972).

Where a claimant, who suffered a head injury in the course of his employment, which resulted in disabling epileptic seizures, had previously suffered from other conditions including a chronic urinary tract infection and a chronic peptic ulcer, apportionment was required, aside from any aggravation of the convulsions by the infection, where the prior conditions actively contributed to the claimant's disability before the injury, causing many absences from work, and continued to operate as a source of disability after the accident. International Paper Co. v. Tiffee, 246 So. 2d 535 (Miss. 1971).

Where the claimants' decedent had suffered a major heart attack six months before his final and fatal heart attack which was found to have been precipitated by his job activities, there was sufficient evidence in the record to support a finding that a pre-existing condition contributed to the death, and to require apportionment if benefits were awarded, even though the defendants, who pleaded a pre-existing disease and requested apportionment, offered no proof on this issue. Futorian Mfg. Co. v. Easley's Dependents, 244 So. 2d 413 (Miss. 1971).

Where a claimant's physician testified on cross-examination that the lifting of a ten-pound sack of potatoes was insufficient to cause a herniated thoracic disc unless there was a pre-existing disease which had weakened the spine, and where an x-ray report of the claimant's spine indicated that there was a degenerative disease of the lower spine, the cause was to be remanded to the commission for a determination as to the duration of temporary disability and the remaining permanent disability with compensation properly apportioned. Better Living Mkts., Inc. v. Smith, 241 So. 2d 152 (Miss. 1970).

Where claimant's first injury contributed to or was responsible for two-thirds of the end result of her second injury, employer's compensation carrier at time of occurrence of second injury was liable for only one third of weekly benefit award after apportionment. Arender v. National Sales, Inc., 193 So. 2d 579 (Miss. 1966), motion granted, 195 So. 2d 90 (Miss. 1967).

Where, following a traverse fracture of the upper one third of the right femur received in the course of his employment, claimant's leg was amputated, and the evidence established that the amputation was necessitated in part by claimant's pre-existing osteomyelitis, apportionment of his compensation award was proper. Communications Equip. Co. v. Burke, 186 So. 2d 765 (Miss. 1966).

Where there is competent evidence properly before the commission in the form of medical findings of a pre-existing physical handicap, disease or lesion, and proof is undisputed that this was a material contributing factor in the results, it is mandatory under this section [Code 1942, § 6998-04] that the compensation be reduced. Armstrong Tire & Rubber Co. v. Payton, 186 So. 2d 217 (Miss. 1966).

Evidence held sufficient to warrant commission in apportioning 25% of death benefit to a pre-existing heart disease, though medical witnesses could not fix exact amount attributable to disease. Southeastern Constr. Co. v. Dodson's Dependent, 247 Miss. 1, 153 So. 2d 276 (1963).

Reduction of amount awardable to widow for death of husband largely attributable to a pre-existing condition, sustained. Federal Compress & Whse. Co. v. Clark's Dependent, 246 Miss. 868, 152 So. 2d 921 (1963).

36. — —Not required.

No proof existed showing that the employee's pre-existing high blood pressure or his enlarged heart caused him any loss of wage earning capacity prior to the date of a syncope episode, and until that time he was able to perform the functions of his employment without limitation; under these circumstances, apportionment of the employee's benefits was inappropriate. Hinds County Bd. of Supervisors v. Johnson, 977 So. 2d 1193 (Miss. Ct. App. 2007), writ of certiorari denied by 977 So. 2d 1144, 2008 Miss. LEXIS 133 (Miss. 2008).

While two physicians did state that claimant's knee injuries sustained at work were exacerbated and perpetuated by claimant's morbid obesity, and while only preexisting occupational disabilities generated a duty to apportion, in claimant's case, neither party raised the issue of apportionment, nor was there any evidence presented to prove that claimant had a preexisting disability that caused claimant to be occupationally disabled prior to claimant's injury at work; thus, the commission's ruling that claimant had failed to prove that claimant was entitled to permanent disability benefits beyond the 3 percent impairment ratings assigned to each knee was not clearly erroneous or contrary to the overwhelming weight of the evidence. McMillian v. Delphi Packard Elec. Sys., 921 So. 2d 345 (Miss. Ct. App. 2004), cert. denied, 926 So. 2d 922 (Miss. 2006).

Substantial evidence supported an award of permanent partial disability benefits to a claimant resulting from the industrial loss of use of the claimant's upper extremities due to a work-related injury while employed by the employer; the claimant suffered no prior occupational disability that would have required apportionment of the award. Peco Foods of Miss., Inc. v. Keyes, 820 So. 2d 775 (Miss. Ct. App. 2002).

Apportionment was not required in a heart injury case involving a firefighter who worked for a city for over 20 years, but who became unable to work or procure any employment that would not put his life in danger; although the claimant may have been at risk because of family history for pre-existing medical infirmities, those difficulties were not occupational disabilities, and the stress of his job ignited what had been a dormant condition. City of Laurel v. Blackledge, 1999 Miss. App. LEXIS 333 (Miss. Ct. App. June 22, 1999), subst. op., 755 So. 2d 573 (Miss. Ct. App. 2000).

Apportionment is not proper based on evidence that factors other than those related to the job activity immediately in question contributed to the disabling condition where there is no showing of previous occupational disability. Delta CMI v. Speck, 586 So. 2d 768 (Miss. 1991).

There is no basis upon which to award apportionment where cause of employee's death remained unknown, despite testimony regarding possibility employee had suffered attack of acute malignant arrhythmia. United States Rubber Reclaiming Co. v. Dependents of Stampley, 508 So. 2d 673 (Miss. 1987).

Apportionment was not required upon a showing that up to the time of injury, employee, who had a pre-existing spondylosis, was gainfully employed, and was experiencing no occupational disability as a result of his pre-existing condition. Marshall Durbin, Inc. v. Hall, 490 So. 2d 877 (Miss. 1986).

Compensation is not apportionable until the date of maximum medical recovery, regardless of whether an injury is permanent and total or of lower quality and character; thus, a 10% penalty was correctly applied to the unapportioned amounts payable prior to the date of maximum medical recovery. M.D. Hayles Lumber, Inc. v. Hamilton, 366 So. 2d 1075 (Miss. 1978).

Where the nature of the alleged preexisting disease was more closely akin to the normal degenerative conditions of the body which accompany age rather than a material contributing factor to the claimant's condition following injury, the employer was not entitled to apportionment. Huffman v. State, 324 So. 2d 759 (Miss. 1976).

The record of a prior adjudication of total and permanent disability of a claimant by the workmen's compensation commission is not sufficient evidence, standing alone, upon which benefits for a subsequent injury may be apportioned and reduced; it was incumbent upon the employer-carrier to not only prove by a preponderance of the evidence that the claimant continued to have his preexisting physical handicap or disease, but additionally, the burden was upon them to prove by medical findings that such preexisting physical handicap or disease was a material contributing factor to his disability following the subsequent injury. Observa-Dome Lab., Inc. v. Ivy, 302 So. 2d 862 (Miss. 1974).

Where the fifth lumbar disc was normal and sound, having only the amount of degeneration usual to one of the employee's age, the commission properly found that the employee had no pre-existing condition requiring apportionment. Weaver Pants Co. v. Duncan, 231 So. 2d 489 (Miss. 1970).

Where the principal physical characteristic of the claimant prior to suffering a back injury on the job was obesity, apportionment of his claim was improperly allowed. Empire Home Bldrs. v. Guthrie, 187 So. 2d 17 (Miss. 1966).

In the absence of substantial evidence on the part of the employer and insurer that the claimant's pre-existing pulmonary emphysema was a contributing factor to his disability resulting from asthmatic attacks occasioned by exposure in the course of his employment to certain quick-drying enamel used in painting automobiles, it was proper that no apportionment of benefits was made. Crump v. Fields, 251 Miss. 864, 171 So. 2d 857 (1965).

Evidence held insufficient to support a proportionate reduction of compensation. Cuevas v. Sutter Well Works, 245 Miss. 478, 150 So. 2d 524 (1963).

37. Deviation from employment or duties.

While in the course of his return from an employer-compensated trip to a motel national convention, a motel manager took a side trip for the two-fold purpose of visiting a grandchild and checking a business sign erected on a site upon which the manager's employer proposed to build a motel, the death of the manager in an automobile accident during the course of the side trip was compensable. E & M Motel Mgt., Inc. v. Knight, 231 So. 2d 179 (Miss. 1970).

The fact that the employer paid all travel expenses for a business trip, while not necessarily controlling, is of some significance in determining whether the death of an employee while on such trip is compensable. E & M Motel Mgt., Inc. v. Knight, 231 So. 2d 179 (Miss. 1970).

A salesman who was furnished an automobile by his employer as an integral part of his contract of employment, was authorized to keep it at his residence, and was directed to have it serviced once a week at a particular filling station, left the car to be serviced and then deviating temporarily from the course of his employment joined fellow employees at a bar where they drank whisky, but subsequently returned to the filling station and picked up the car and while driving the most direct route to his home was involved in an unexplained automobile accident from which he subsequently died, was injured within the scope and course of his employment. Murphy v. Jac-See Packing Co., 208 So. 2d 773 (Miss. 1968).

A claimant who, while on duty as a pumper in an oil field, departed from his place of employment and drove his automobile several miles away to pick up two quail hunters, one of whom happened to be his immediate superior not on duty at the time, and was severely injured in an accident while returning to his place of employment, was not injured within the scope of his employment. Bivens v. Marshall R. Young Drilling Co., 251 Miss. 261, 169 So. 2d 446 (1964).

Fatal accident to an employee while driving employer's vehicle on returning from a midweek trip to his home did not arise out of the employment where the trip was for the employee's personal pleasure and not under any agreement with the employer, whose policy was against such use of the employer's vehicles. Phillips Contracting Co. v. Adair's Dependents, 245 Miss. 365, 148 So. 2d 189 (1963).

Injuries sustained by a district manager for an insurance company did not arise out of or in the course of his employment where sustained while the manager was on a trip to obtain his own car and to return it to the place where he was stationed, and the fact that the manager looked over some insurance policies, collected a premium, and discussed a permanent plan of insurance with a customer did not change the result. National Bankers Life Ins. Co. v. Jones, 244 Miss. 581, 145 So. 2d 173 (1962).

Injury to a chemist from an explosion of material while being tested by him for a third person on his employer's premises does not arise out of and in the course of his employment. Connell v. Armstrong Tire & Rubber Co., 242 Miss. 280, 134 So. 2d 435 (1961).

Where an insurance salesman, after walking a short distance in the direction of a potential customer, returned to his car to obtain a gun to shoot crows, an injury sustained by the salesman when the gun accidentally discharged occurred at a time when the salesman was on a personal mission of his own. Earnest v. Interstate

Life & Accident Ins. Co., 238 Miss. 648, 119 So. 2d 782 (1960).

When an employer's motor vehicle is being driven by an employee, it is presumed to be on the employer's business, and the burden is on the employer to prove that it was being driven on a route which the employee's duties did not require him to take. Wilson Furn. Co. v. Wilson, 237 Miss. 512, 115 So. 2d 141 (1959).

Under uncontradicted proof that an automobile salesman had left his home in the evening on what was initially a business mission, and had temporarily deviated therefrom later in the evening while engaging in social activities, but he had resumed his business while on his way home at the time he was killed in an automobile accident, the salesman's death arose out of and in the course of his employment, and was compensable. Thrash v. Jackson Auto Sales, Inc., 232 Miss. 845, 100 So. 2d 574 (1958).

If a servant while engaged about his master's business deviates therefrom to engage in some personal errands or mission, the master's responsibility may be temporarily suspended, but it is re-established when the servant resumes his duties. Thrash v. Jackson Auto Sales, Inc., 232 Miss. 845, 100 So. 2d 574 (1958).

Where an employee has been permitted to stay at home, a benefit personal to him, yet while there he also performs a service for his employer, the existence of the two purposes does not defeat claims for workmen's compensation. Allen's Dairy Prods. Co. v. Dependents of Whittington, 230 Miss. 285, 92 So. 2d 842 (1957).

Although the employee had earlier deviated from his employment, where, at the time of receiving fatal injury in a highway accident, he was on his way home where he was required to make out certain reports for his employer, his death arose out of and in the course of his employment. Allen's Dairy Prods. Co. v. Dependents of Whittington, 230 Miss. 285, 92 So. 2d 842 (1957).

Death of an employee, who, while engaged in transporting a pump across a river for his employer, dived out of the boat in order to cool off and was drowned, did not arise out of and in the course of his employment. Collier v. Texas Constr. Co., 228 Miss. 824, 89 So. 2d 855 (1956), error overruled 228 Miss. 824, 90 So. 2d 390.

Where an employee went on a personal trip out of town in his own automobile and during the return trip was killed, the injury and death was not a result of an accident arising out of and in the course of employment, even though on the return trip the employee carried records of employer. Durr's Dependents v. Schlumberger Oil Well Surveying Corp., 227 Miss. 606, 86 So. 2d 507 (1956).

Where an assistant foreman, who had a regular working day of 8 hours but was subject to call during the whole 24 hours, lived near the employer's office and on the day of the accident put in 8 hours at work and later at home was washing grease from his hands with casing head gas which was set off by a lighted heater, burning the employee so seriously that he died, the injury did not arise out of and in the course of employment. Ferguson v. Sohio Petro. Co., 225 Miss. 24, 82 So. 2d 575 (1955).

Where an employee, who had torn the bottom of his trousers while unloading soft drinks, was sent home to change his trousers, and was struck by an automobile while riding a borrowed bicycle, the claimant was not injured in the course of his employment and was not entitled to compensation. Dr. Pepper Bottling Co. v. Chandler, 224 Miss. 256, 79 So. 2d 825 (1955).

Where an employee was searching for employer's cows with two other employees who were not then on pay, halted his search so a fellow employee could shoot a squirrel, and as a result the employee suffered an eye injury when a pellet ricocheted, there was no causal connection between the injury and the employment, and no compensation would be awarded even though the employer allowed squirrel shooting on the job. Persons v. Stokes, 222 Miss. 479, 76 So. 2d 517 (1954).

38. Injury from assault or other intentional acts.

Finding that the employee's injury did not arise out of his employment was proper where an injury from a third party assault that occurred due to a purely personal vendetta or disagreement did not arise out of the employment pursuant to Miss. Code Ann. § 71-3-7 and Miss. Code Ann. § 71-3-3(b). In the case, the assault arose solely from the employee's personal disagreement with a co-employee concerning a $10 loan. Sanderson Farms, Inc. v. Jackson, 911 So. 2d 985 (Miss. Ct. App. 2005).

Employee who was assaulted in her apartment parking lot by her co-worker and roommate was not entitled to compensation injuries arising out of and in the course of her employment. Hawkins v. Treasure Bay Hotel & Casino, 813 So. 2d 757 (Miss. Ct. App. 2001).

Where the claimant was kidnapped by an unknown assailant when she arrived at work and parked in a parking lot without security guards, her injury was work-related and, therefore, compensable because the employer maintained a revocable license to use the parking lot where the abduction occurred. Adams v. Lemuria, Inc., 738 So. 2d 295 (Miss. Ct. App. 1999).

Injuries sustained by the claimant were work-related where she was assaulted and robbed by an unknown assailant while following her employer's instructions to (1) arrive at work late at night and (2) to park in a secluded parking lot without security guards nearby to protect her as she got out of her vehicle. Green v. Glen Oaks Nursing Ctr., 722 So. 2d 147 (Ct. App. 1998).

The dependent of a deceased employee of a service station was properly granted workmen's compensation benefits where the deceased employee had been shot and killed by the husband of the deceased employee's supervisor, who was also a supervisor at the service station, and where the evidence supported the conclusion that the deceased employee had thought that he was involved in a work-related activity when he was called over to the husband's automobile, despite the fact that the confrontation arose because of the employee's relationship with the wife. Kerr-McGee Corp. v. Hutto, 401 So. 2d 1277 (Miss. 1981).

The only exceptions provided by this section [Code 1942, § 6998-04] to an employer's liability for payment of compensation is where the intoxication of the employee was the proximate cause of the injury, or if the injury resulted from the wilful intention of the employee to injure or kill himself or another. Kemp v. Atlas Fertilizer & Chem. Co., 197 So. 2d 485 (Miss. 1967), supplemented, 199 So. 2d 52 (Miss. 1967).

The death of an employee in the course of his employment who was shot and killed by the irate husband of a woman with whom he was having an affair did not arise out of the scope of his employment but resulted from an "act, actions, and activities" foreign thereto, and consequently was not compensable. Ellis v. Rose Oil Co., 190 So. 2d 450 (Miss. 1966).

An assault by a third person is work-connected if it grows out of a quarrel whose subject matter is related to the work. John Hancock Trucking Co. v. Walker, 243 Miss. 487, 138 So. 2d 478 (1962).

Death of one shot for some unknown reason by a fellow employee, whom in the discharge of his duty he was transporting to place of work, was one arising out of and in the course of employment. Watson v. National Burial Ass'n, 234 Miss. 749, 107 So. 2d 739 (1958).

Where there is a wilful intention on part of the employee to injury himself, compensation is not payable under the workmen's compensation laws. L.B. Priester & Son v. McGee, 234 Miss. 471, 106 So. 2d 394 (1958).

Evidence that employee was murdered by jilted suitor and that the only connection between her employment and cause of her death was that she was on duty at the time she was shot and was merely informing the slayer of the rules of the telephone company prohibiting visitors in operating room of the telephone exchange, and that the slayer immediately after shooting the employee turned a pistol upon himself and committed suicide, failed to establish that the employee was killed because of her employment, and therefore she was not under the protection of the Workmen's Compensation Law. West's Estate v. Southern Bell Tel. & Tel. Co., 228 Miss. 890, 90 So. 2d 1 (1956).

Under the statute, if the injury or death has been caused by the wilful act of a third person it must be shown that such wilful act was directed against the employee because of his employment while so employed and working on the job, and there must be shown some causal connection between the injury and employment other than the mere fact that the employment brought the employee to the place where he was injured, and the employment must have been connected with the injury in some more direct manner than merely furnishing an opportunity for the employee to be assaulted. Brookhaven Steam Laundry v. Watts, 214 Miss. 569, 55 So. 2d 381 (1951).

When an assault is unconnected with the employment, or is for reasons personal to the assailant and the one assaulted, or is not because the relation of employer and employee exists, and the employment is not the cause, though it may be the occasion of the wrongful act and may give a convenient opportunity for its execution, it is ordinarily held that the injury did not arise out of employment. Brookhaven Steam Laundry v. Watts, 214 Miss. 569, 55 So. 2d 381 (1951).

The issue whether the claimant was assaulted because of his employment, while so employed and working on a job, was one of fact and for decision of the commission. Barry v. Sanders Co., 211 Miss. 656, 52 So. 2d 493 (1951).

39. Horseplay.

Where employees were engaged in horseplay and afterward an employee was struck on the head with a shovel by fellow employee, under the Workmen's Compensation Law the assaulted employee is entitled to compensation for injury resulting, where the employment and nature of the work brought employee and fellow employee in close contact with each other and one of the hazards of such contact was that an assault might be committed by the other. Mutual Implement & Hdwe. Ins. Co. v. Pittman, 214 Miss. 823, 59 So. 2d 547 (1952).

40. Forbidden acts.

Where the employee's act of lifting a sewing machine into a customer's car was within the sphere of his employment, the fact that he had been expressly forbidden to lift machines was not fatal to his claim for compensation for injuries resulting from the act. Kahne v. Robinson, 232 Miss. 670, 100 So. 2d 132 (1958).

41. Intoxication.

Employee admitted during testimony that the machine should have been turned off when working on it, and he admitted that he knew how to turn off the machine. He clearly was injured because he failed to properly operate the machine and his level of intoxication (a blood alcohol level of .129 percent about two hours after the accident),was significant; his intoxication was so significant, a pharmacologist opined that his injury was proximately caused by his intoxication, and therefore, pursuant to Miss. Code Ann. § 71-3-7, he was not entitled to benefits. Sanderson Farms, Inc. v. Deering, 909 So. 2d 1169 (Miss. Ct. App. 2005).

Worker's claim that a drug screen taken shortly after the injury occurred when he fell off a tree that he was trying to trim with a chain saw after the tree had been pushed over by a backhoe, which showed the presence of cannabinoids or marijuana in the worker's body at a concentration level of 111 nanograms per milliliter, was the result of passive exposure to marijuana smoke or use in the distant past was rebutted by expert testimony that such a concentration level was inconsistent with such claims; worker's claim for workers' compensation benefits was properly denied. Edwards v. World Wide Pers. Servs., Inc., 843 So. 2d 730 (Miss. Ct. App. 2002).

Intoxication or impairment by other substances, legal or illegal, is not an issue in whether benefits for an injury arising on the job are payable; although the discovery of such conduct before it causes injury may appropriately result in the termination or other discipline of the employee, these considerations cannot result in the denial of disability benefits once an otherwise compensable injury has occurred. Tyson Foods, Inc. v. Hilliard, 772 So. 2d 1103 (Miss. Ct. App. 2000).

The burden is on the employer to show that the employee's intoxication was the proximate cause of his injury, and in the absence of such proof evidence that the employee had been drinking is not sufficient to enable the employer to avoid liability to pay compensation. Murphy v.

Jac-See Packing Co., 208 So. 2d 773 (Miss. 1968).

Claimant, who admittedly had previously taken one or two drinks of whisky, stepped in a hole and broke his leg when he stopped by the roadside to relieve himself was entitled to compensation upon the determination of the commission, from conflicting evidence, that intoxication was not the proximate cause of his injury. Reading & Bates, Inc. v. Whittington, 208 So. 2d 437 (Miss. 1968).

This section [Code 1942, § 6998-04] places the burden upon the employer to prove that claimant was intoxicated at the time of the accident and that his intoxication was the proximate cause of his injury. Reading & Bates, Inc. v. Whittington, 208 So. 2d 437 (Miss. 1968).

The only exceptions provided by this section [Code 1942, § 6998-04] to an employer's liability for payment of compensation is where the intoxication of the employee was the proximate cause of the injury, or if the injury resulted from the wilful intention of the employee to injure or kill himself or another. Kemp v. Atlas Fertilizer & Chem. Co., 197 So. 2d 485 (Miss. 1967), supplemented, 199 So. 2d 52 (Miss. 1967).

Evidence was insufficient to show that intoxication was the cause of the death of a truck driver who was stuck by logs falling off another truck after he had parked his truck pursuant to instructions in that regard, and after he had been told that he was laid off for the rest of the day for being intoxicated. Smith Bros. v. Bob Cleveland's Dependents, 240 Miss. 100, 126 So. 2d 519 (1961).

Intoxication is an affirmative defense with the burden of proof upon the employer pleading it. United States Fid. & Guar. Co. v. Collins, 231 Miss. 319, 95 So. 2d 456 (1957), corrected, 231 Miss. 341, 96 So. 2d 456 (1957).

Where the evidence was conflicting upon the issue of whether the injured employee was intoxicated at the time of the accident, and if so, whether his intoxication was a proximate cause of his injuries, finding of the attorney-referee and commission in favor of the employee was affirmed. United States Fid. & Guar. Co. v. Collins, 231 Miss. 319, 95 So. 2d 456 (1957), corrected, 231 Miss. 341, 96 So. 2d 456 (1957).

42. Imported danger.

Where an employee was in his car just outside his employer's premises waiting for a company sponsored Christmas dinner to begin, when he died from a gunshot wound to his chest from his own pistol found lying on the seat, which pistol he was accustomed to keep in the car, and there was no showing that the death had been caused by another party, the presumption of causal connection between the employment and the death was not applicable, since the death did not arise out of his employment, and since moreover, the source of the injury was within the doctrine of "imported danger" in that it was a hazard brought on to the employment premises by the decedent himself, and compensation was not recoverable by the decedent's dependents. Space Steel Corp. v. Jones, 248 So. 2d 807 (Miss. 1971).

The term "imported danger" is a convenient label for a class of cases in which the source of the injury is a hazard brought onto the employment premises by the claimant himself. Earnest v. Interstate Life & Accident Ins. Co., 238 Miss. 648, 119 So. 2d 782 (1960).

Where admittedly a shotgun carried by an insurance salesman had no connection with his work and was for his own personal pleasure, the shotgun represented an "imported danger," and the injury sustained by the salesman when the shotgun accidentally discharged was not compensable. Earnest v. Interstate Life & Accident Ins. Co., 238 Miss. 648, 119 So. 2d 782 (1960).

43. Liability of contractors and subcontractors.

Employer was a contractor, not a subcontractor, of the three timber owners, as neither of the three companies had already contracted for the performance of the work done by the employer; neither company was the employee's statutory employer under Miss. Code Ann. § 71-3-7 and had no statutory responsibility to insure the employee; assuming the Mississippi Workers' Compensation Commission (Commission) was empowered under

Miss. Code Ann. § 71-3-37(13) to determine whether another company was contractually bound, the Commission was entitled to accept the testimony that the company never agreed to provide workers' compensation coverage for the employer, but instead, required the employer to have its own workers' compensation insurance. Miss. Loggers Self Insured Fund, Inc. v. Andy Kaiser Logging, 992 So. 2d 649 (Miss. Ct. App. 2008), writ of certiorari denied by 997 So. 2d 924, 2008 Miss. LEXIS 537 (Miss. 2008).

Daughter of decedent, who was killed while hauling logs for a subcontractor, was not entitled to bring a worker's compensation claim, pursuant to Miss. Code Ann. § 71-3-9 because workers' compensation payments were the exclusive remedy, and subcontractor had secured payment of compensation in compliance with Miss. Code Ann. § 71-3-7. Lamar v. Thomas Fowler Trucking, Inc., 956 So. 2d 878 (Miss. 2007).

As an employee's complaint against an employer and general contractor sounded in negligence, and Mississippi had the "most significant relationship" with the action, Mississippi, not Alabama, law applied. Therefore, the contractor was immune from suit under Miss. Code Ann. § 71-3-7 because the employer had workers' compensation coverage for him. Powe v. Roy Anderson Constr. Co., 910 So. 2d 1197 (Miss. Ct. App. 2005), writ of certiorari denied en banc by 942 So. 2d 164, 2006 Miss. LEXIS 640 (Miss. 2006).

Where the decedent's employer agreed under the subcontract with the contractor to provide workers' compensation coverage to the employees, and the employer did so, the contractor was entitled to summary judgment pursuant to Miss. R. Civ. P. 56 in the decedent's heirs' wrongful death action; construing Miss. Code Ann. § 71-3-7, relating to a contractor's obligation to provide workers' compensation coverage, and Miss. Code Ann. § 71-3-9, the workers' compensation exclusivity provision, together, it was determined that where the employer provided compensation coverage to its employees pursuant to the contract with the contractor, the contractor qualified as a statutory employer and was immune from tort liability claims by the heirs. Thornton v. W. E. Blain & Sons, Inc., 878 So. 2d 1082 (Miss. Ct. App. 2004).

Where a widow whose husband died while working for a general contractor sued the contractor based on its alleged failure to properly repair damaged bolts, the trial court properly granted summary judgment to the contractor as its conduct was at most gross negligence or reckless indifference, which, as a matter of law, did not defeat the exclusivity provision of the workers' compensation statutes. Bevis v. Linkous Constr. Co., 2003 Miss. App. LEXIS 773, 856 So. 2d 535 (Miss. Ct. App. 2003), cert. denied, 860 So. 2d 1223 (Miss. 2003).

A subcontractor or general contractor is entitled to immunity where a sub-subcontractor failed to secure coverage for the benefit of an injured employee. Castillo v. M.E.K. Constr., Inc, 741 So. 2d 332 (Miss. Ct. App. 1999).

A construction company was the general contractor and the deceased's statutory employer where the company was established for the very function of operating as a general contractor and the president of the company was the general contractor. Castillo v. M.E.K. Constr., Inc, 741 So. 2d 332 (Miss. Ct. App. 1999).

Prime contractor was statutory employer of sub-subcontractor's employee, and thus, was immune from liability under Workers' Compensation Act's exclusivity of remedy provision in negligence action brought by injured employee, where sub-subcontractor provided compensation coverage to its employees pursuant to its contract with prime contractor. Salyer v. Mason Technologies, Inc., 690 So. 2d 1183 (Miss. 1997).

Sub-subcontractor satisfied definition of "subcontractor" under workers' compensation statute, where it contracted with subcontractor to complete portions of steel work on building, and subcontractor had previously contracted with general contractor to do structural steel work on building; sub- subcontractor entered into express contract with subcontractor for performance of act which subcontractor had already contracted to complete. Crowe v. Brasfield & Gorrie Gen. Contractor, 688 So. 2d 752 (Miss. 1996), reh'g denied, 691 So. 2d 1027 (Miss. 1997).

Cable lineman supervisor was entitled to worker's compensation benefits, although he was subcontractor and not employee, where owner of company for which subcontractor was performing job knew subcontract was being performed by 6 workmen and had agreed to provide workers' compensation coverage for them, even though owner did not know that subcontractor himself was one of crew members. Champion Cable Constr. Co. v. Monts, 511 So. 2d 924 (Miss. 1987).

In tort action brought by employee of casing crew injured while working at oil well drilling site, oil drilling contractor was general contractor in drilling well, casing company was subcontractor for setting casing, and thus statutory obligation imposed upon general contractor to provide workers' compensation coverage rendered him immune from third party tort liability, notwithstanding his one-fourth interest in oil, gas, and minerals sought by drilling well. Brown v. Williams, 504 So. 2d 1188 (Miss. 1987).

Requirement that contractor assure worker's compensation coverage for employees of subcontractor does not entitle contractor to defense under exclusiveness of liability statute (§ 71-3-9) where subcontractor has in fact obtained coverage. Nash v. Damson Oil Corp., 480 So. 2d 1095 (Miss. 1985).

A general contractor would be immune from a common law negligence action brought by its subcontractor's employee, where the general contractor was the statutory employer of the employee inasmuch as the general contractor "secured" compensation insurance for the benefit of the subcontractor's employee within the meaning of § 71-3-7 by requiring the subcontractor to secure a policy of workmen's compensation insurance on its employees. Doubleday v. Boyd Constr. Co., 418 So. 2d 823 (Miss. 1982).

Under evidence showing that in engaging a subcontractor to perform certain work, the contractor retained control of the conduct of the subcontractor with respect to the work to be done, and the order, method, and plan of that work, the subcontractor was not an independent contractor, but was an employee of the contractor, and the deceased employee of the subcontractor, and the workmen's compensation commission did not err in awarding benefits to the dependents of the deceased employee. Louis A. Gily & Sons v. Shankle's Dependents, 246 Miss. 384, 149 So. 2d 480 (1963).

One having a right to cut and remove timber from another's land, who engages another to cut it, is not liable as a prime contractor for compensation to an injured employee of such other. Rodgers v. Phillips Lumber Co., 241 Miss. 590, 130 So. 2d 856 (1961).

In view of the common law rule, which was not changed by the Workmen's Compensation Law, that partners are jointly and severally liable for partnership obligations, and the provisions of Code 1942, § 6998-39, a carrier which had written a compensation policy for one of the partners in the partnership, was liable for compensation benefits to the partnership employee. United States Fid. & Guar. Co. v. Collins, 231 Miss. 319, 95 So. 2d 456 (1957), corrected, 231 Miss. 341, 96 So. 2d 456 (1957).

Since a compensation policy secured in his own behalf by one of the members of a partnership doing subcontracting work covered the compensation rights of injured partnership employee, the secondary liability of the prime contractor and its carrier did not take effect as a direct obligation upon the ground that the partnership failed to secure coverage of its employees. United States Fid. & Guar. Co. v. Collins, 231 Miss. 319, 95 So. 2d 456 (1957), corrected, 231 Miss. 341, 96 So. 2d 456 (1957).

Immunity to common-law suits as provided in Code 1942, §§ 6998-05 and 6998-36 is extended to statutory employers who come within the provisions of this section [Code 1942, § 6998-04], holding a general contractor to be the statutory employer of a subcontractor's employee so that latter's exclusive remedy was under the Workmen's Compensation Law. Mosley v. Jones, 224 Miss. 725, 80 So. 2d 819 (1955).

The purpose of legislature was to prevent the general contractor from escaping liability by employing subcontractors who were not financially responsible and leaving the employees unprotected. Mills v.

Barrett, 213 Miss. 171, 56 So. 2d 485 (1952).

The statutory language is plain, clear, and unambiguous and has the effect of making the employees of a subcontractor, where the subcontractor does not carry insurance for the protection of his employees, the employees of the principal or general contractor within the meaning of the Workmen's Compensation Law. Mills v. Barrett, 213 Miss. 171, 56 So. 2d 485 (1952).

Where an employee of subcontractor was injured March 1950 the liability was governed by the 1948 Workmen's Compensation Law which provided that the contractor shall secure payment of compensation to all employees of subcontractor which are not under compensation, and was not governed by the 1950 amendment which provided that the number of employees of the subcontractor and not the contractor shall be the factor determining liability. Mills v. Barrett, 213 Miss. 171, 56 So. 2d 485 (1952).

44. Independent contractors, generally.

Claimant has burden of proving that he sustained an accidental injury arising out of and in the course and scope of his employment, and that the injury caused the disability for which he is claiming benefits. Sonford Prods. Corp. v. Freels, 495 So. 2d 468 (Miss. 1986), overruled on other grounds, Bickham v. Department of Mental Health, 592 So. 2d 96 (Miss. 1991).

The two tests to be considered in analyzing an employee-independent contractor question are the control test and the relative nature of the work test, the latter of which pertains to the character of the claimant's work or business and its relation to the employer's business. Boyd v. Crosby Lumber & Mfg. Co., 250 Miss. 433, 166 So. 2d 106 (1964).

The fact that a truck driver, injured while hauling gravel, owned and furnished his own truck for hauling the gravel was not a determinative factor in determining whether the truck driver was an employee or independent contractor. Wade v. Traxler Gravel Co., 232 Miss. 592, 100 So. 2d 103 (1958).

The fact that a truck driver, injured while hauling gravel, was paid a unit price per yard for the gravel he hauled, instead of an hourly wage, was not proof in itself that the truck driver was an independent contractor. Wade v. Traxler Gravel Co., 232 Miss. 592, 100 So. 2d 103 (1958).

Tests to determine whether relationship of master and servant or independent contractor exists are as follows: Whether the principal master has the power to terminate the contract at will; whether he has the power to fix the price and payment for work or vitally controls the manner and time of payment; whether he furnishes the means and appliances for the work; whether he has control of the premises; whether he furnishes the materials upon which the work is done and receives the output thereof, the contractor dealing with no other person in respect to the output; whether he has the right to prescribe and furnish the details of the kind and character of the work to be done; whether he has the right to supervise and inspect the work during the course of employment; whether he has the right to direct the details of the manner in which the work is to be done; and whether he has the right to employ and discharge the subemployees and to fix their compensation, and is obliged to pay the wages of the said employees. Employers Ins. Co. v. Dean, 227 Miss. 501, 86 So. 2d 307 (1956).

45. —Entitled to benefits.

Cable lineman supervisor was entitled to worker's compensation benefits, although he was subcontractor and not employee, where owner of company for which subcontractor was performing job knew subcontract was being performed by 6 workmen and had agreed to provide workers' compensation coverage for them, even though owner did not know that subcontractor himself was one of crew members. Champion Cable Constr. Co. v. Monts, 511 So. 2d 924 (Miss. 1987).

Where the duration and continuity of a plumber's work for an operative builder made his activities an integral part of the builder's production process, he was an employee and not an independent contractor. Empire Home Bldrs. v. Guthrie, 187 So. 2d 17 (Miss. 1966).

Where a truck hauler of logs had worked exclusively for 12 years for one logging company and it was recognized that the hauler could quit at any time or that the company had the right to fire him, the hauler was not an independent contractor, but his work was so meshed into an integral part of the business of the company that the hauler and his injured employee were both employees of the company so as to entitle the employee to compensation. Brown v. E.L. Bruce Co., 253 Miss. 1, 175 So. 2d 151 (1965).

A taxicab driver, allegedly operating on a "franchise" basis, who was required to operate the same kind of car with the same mechanical equipment furnished by the cab company, to wear the same kind of uniform, to receive his calls for passengers from the same central point, to buy gas and oil from the company, and was subject to the same rules of conduct as all of its other drivers, was participating in the business of the company as an integral part of it and was an employee. White Top & Safeway Cab Co. v. Wright, 251 Miss. 830, 171 So. 2d 510 (1965).

The finding of the workmen's compensation commission that a log hauler and an injured claimant employed by him were employees of a mill operator was warranted where, notwithstanding that the contract between the mill operator and the hauler provided that the former should have no control over the hauling, the evidence, including evidence of the method of payment and the right to terminate the relationship, showed the mill operator had control over the hauler, and it further appeared that the injured claimant's work for the mill operators and the hauler was an integral part of the mill operator's production process, and the hauler was not performing an independent business service and was not engaged in a business of his own. Boyd v. Crosby Lumber & Mfg. Co., 250 Miss. 433, 166 So. 2d 106 (1964).

In view of evidence as to the degree of control exercised by truck lessee over the activities of the employee truck driver, and the fact that the employee truck driver performed work which carried out an integral part of the truck lessee's business, the relationship was one of employment rather than that of independent contractor. Burnham Van Serv., Inc. v. Dependents of Moore, 250 Miss. 165, 164 So. 2d 733 (1964).

Evidence, including a showing that the foreman, who had charge of harvesting pecans on certain lands of employer, hired, transported and directed claimant and other pickers, claimant's employment could be terminated at any time by the employer, so that the employer, through his foreman, exercised control over every phase of claimant's work, established that claimant was an employee rather than an independent contractor. Selph v. Stricker, 238 Miss. 597, 119 So. 2d 351 (1960).

One hauling in his own truck, at his own expense, on a unit basis, gravel to be used in surfacing, held an employee of the contractor doing the surfacing, and not an independent contractor. Bush v. Byrd's Dependents, 234 Miss. 782, 108 So. 2d 211 (1959).

Under evidence showing that, among other things, the work performed by three commissioned salesmen, who drove their own automobiles, constituted an integral part of the business of a partnership selling sewing machines, the partnership controlled the maximum price of the machines, could accept or reject any deferred payment contracts, required the salesmen to service the machines sold, could fire any of the salesmen at will, and the salesmen turned over to the partnership all funds collected, the attorney-referee and the commission did not err in finding that the commission salesmen were employees and not independent contractors, so that the partnership, which employed five additional persons, was an employer subject to the provisions of the Workmen's Compensation Law. Kahne v. Robinson, 232 Miss. 670, 100 So. 2d 132 (1958).

In a proceeding for workman's compensation benefits for injury sustained while hauling gravel by a truck driver, who owned and furnished his own truck, evidence that the truck driver was hired to haul gravel at so much per cubic yard and according to the length of the haul, did not contract to do a set piece of work, his employment was not to last for a specified period, and that the gravel company controlled the loading of the truck driver's truck, and through ownership and operation of the loading machinery controlled, in a measure, the number of hours per day the driver could haul, determined the kind and quality of gravel that the driver should haul, the distance which the driver was to travel, and the amount of pay which the driver was to receive for delivering gravel to the purchaser, and could terminate the driver's services at any time, showed an employer-employee relationship and not that of an independent contractor. Wade v. Traxler Gravel Co., 232 Miss. 592, 100 So. 2d 103 (1958).

A compensation carrier which had issued a policy to a corporation insuring, by virtue of a separate clause, salesmen at a time when the corporation had only two salesmen, both of whom were also stockholders and officers, and had admittedly received premiums based upon the wages of the secretary-salesman, was estopped to deny that the secretary-salesman, whose death arose out of and in the course of his employment while doing nonsupervisory work, was not covered by the Workmen's Compensation Law. M.E. Badon Refrigeration Co. v. Badon, 231 Miss. 113, 95 So. 2d 114 (1957).

46. —Not entitled to benefits.

Restrictions imposed by the seller of standing timber on its removal do not make the buyer a contractor for its removal so as to render him liable for compensation to a workman of one employed by him. Nickerson v. Patridge, 241 Miss. 40, 128 So. 2d 751 (1961).

Operators of sawmills and their employees who cut and saw standing timber owned by a planing mill and deliver it there for a stated sum per thousand feet, are not employees of the planing mill, which merely designated the timber to be cut, within the Workmen's Compensation Law. Employers Liab. Ins. Co. v. Haltom, 235 Miss. 74, 108 So. 2d 29 (1959).

Denial of compensation upon the ground that claimants' decedent was an independent contractor at the time he was killed on lumber company's premises while unloading logs from a truck was supported by substantial evidence. Ainsworth v. Long-Bell Lumber Co., 233 Miss. 38, 101 So. 2d 100 (1958).

Where claimant was a painter who was engaged in separate business and held himself out to the public as performing an independent service in that he furnished his own tools and equipment, employed his own helpers and paid them their wages, directed the manner of the work, and contracted for a definite completed job, and that he represented the will of his employer only as the result of his work, the claimant was an independent contractor and was not entitled to compensation for injuries sustained. Tranum v. Mitchell Eng'g Co., 223 Miss. 221, 78 So. 2d 111 (1955).

In a suit for workmen's compensation benefits, where deceased was hired to splice a cable on oil well drilling rig and he was not subject to supervision or control of drilling company, and he began to work when it suited him, finished his job and presented his bill, the deceased was an independent contractor and not within coverage under Workmen's Compensation Law. Kughn v. Rex Drilling Co., 217 Miss. 434, 64 So. 2d 582 (1953).

Where deceased, who was a production superintendent of oil well drilling company, after completing his daily round of inspection, drove automobile furnished for the use of the performance of his duties to site of another drilling company and, as an independent contractor, spliced a cable, at which time he became ill and died from cerebral hemorrhage, his death did not arise out of or in course of his employment and his widow was not entitled to benefits under Workmen's Compensation Law. Kughn v. Rex Drilling Co., 217 Miss. 434, 64 So. 2d 582 (1953).

Where two brothers made an agreement for cutting and hauling of timber and employed their own labor in the performance of the contract, regulated their own time for going to work and quitting, used their own trucks and own axes and saws, determined for themselves the number of workmen that they would employ and fixed the wages of their employees, the brothers were independent contractors and the death of one of the brothers during the logging operation was not subject to compensation under the Workmen's Compensation Law. Carr v. Crabtree, 212 Miss. 656, 55 So. 2d 408 (1951).

47. Review.

Although the employer claimed that apportioning 50 percent of the employee's benefits to it was improper because stress could not be held to be 50 percent responsible for the employee's heart attack, and that the employee's retirement benefits had to be included in the computation of the employee's average weekly wage, the employer failed to cite any authority in support of its arguments; therefore, the issues were procedurally barred as an assignment of error that was unsupported by any legal authority and need not be considered by the appellate court. Miss. Dep't of Pub. Safety v. Pickens, 859 So. 2d 1057 (Miss. Ct. App. 2003).

Standard of review in workers' compensation cases is limited and substantial evidence test is used. Inman v. Coca-Cola/ Dr. Pepper Bottling Co., 678 So. 2d 992 (Miss. 1996).

Workers' Compensation Commission is trier and finder of facts in compensation claim; Supreme Court will reverse Commission's order only if it finds that order clearly erroneous and contrary to overwhelming weight of evidence. Inman v. Coca-Cola/Dr. Pepper Bottling Co., 678 So. 2d 992 (Miss. 1996).

Where Workers' Compensation Commission, on review of a decision of its hearing officer, enters order remanding case to administrative judge for further proceedings or testimony, the order is interlocutory only and is not appealable. Blankenship v. Delta Pride Catfish, Inc., 676 So. 2d 914 (Miss. 1996).

Order is interlocutory, and not appealable, when substantial rights of the parties involved in action remain undetermined and when cause is retained for further action. Blankenship v. Delta Pride Catfish, Inc., 676 So. 2d 914 (Miss. 1996).

Workers' Compensation Commission's order was final for purposes of appeal because it determined all matters among the parties and nothing had been retained by Commission or remanded to administrative law judge for further consideration. Blankenship v. Delta Pride Catfish, Inc., 676 So. 2d 914 (Miss. 1996).

A finding that a claimant was not entitled to permanent disability benefits because his disability, which arose from slippage in the spine, was attributable entirely to preexisting spondylolisthesis was not supported by substantial evidence where there was conflicting medical testimony from 2 treating physicians as to the cause of the claimant's permanent disability and neither physician could determine how and when the slippage actually occurred, since close questions of compensability should be resolved in favor of the claimant, and the Workers' Compensation Act should be liberally construed to carry out its remedial purpose. McNeese v. Cooper Tire & Rubber Co., 627 So. 2d 321 (Miss. 1993).

There was substantial evidence in a physician's testimony to support the Workers' Compensation Commission's determination as to the date a claimant reached maximum medical recovery, and therefore the circuit court erred in finding a different date based on the opinion of another physician. Jordan v. Hercules, Inc., 600 So. 2d 179 (Miss. 1992), but see Dulaney v. National Pizza Co., 733 So. 2d 301 (Miss. Ct. App. 1998).

While the Administrative Judge is generally, within the Workers' Compensation Commission, the individual who conducts the hearing and hears the live testimony, the Commission itself is, in law, the finder of the facts, and on judicial review, the Commission's findings and decisions are subject to the normal deferential standards, notwithstanding the Administrative Judge's actions. Walker Mfg. Co. v. Cantrell, 577 So. 2d 1243 (Miss. 1991).

In reversing the Commission's fact-finding, reviewing courts are advised to provided detailed, written support for their conclusions. R.C. Petro., Inc. v. Hernandez, 555 So. 2d 1017 (Miss. 1990).

Decisions of the Mississippi Workers' Compensation Commission on issues of fact will not be overturned if they are supported by substantial evidence. The Commission is the trier of facts as well as the judge of the credibility of the witnesses. Doubtful cases should be resolved in favor of compensation so as to fulfill the beneficial purposes of the statute. Miller Transporters, Inc. v. Guthrie, 554 So. 2d 917 (Miss. 1989).

Because in Mississippi right to compensation benefits is committed to both trier of fact in bad faith tort action and administrative factfinder under Workers' Compensation Act, and resolution of bad faith claim is totally dependent on validity of underlying compensation claim, exhaustion of administrative remedies on underlying compensation issue is required where plaintiff has initiated administrative proceedings prior to filing bad faith tort action, however, decision is limited to those situations were injured claimant institutes administrative proceedings and subsequently files bad faith claim prior to final conclusion of administrative process, and if administrative process is terminated at some point then no exhaustion of administrative remedies requirement exists. Kitchens v. Liberty Mut. Ins. Co., 659 F. Supp. 467 (S.D. Miss. 1987).

Determination of the degree of contribution of the preexisting disease or injury is a question of fact for the Workmen's Compensation Commission which should not be disturbed unless the finding lacks substantial support in the evidence or is manifestly wrong. Stuart Mfg. Co. v. Walker, 313 So. 2d 574 (Miss. 1975).

An adverse decision on the merits of the claim by the employee while he was alive bars a dependency claim under the doctrine of res judicata, for the questions have already been fully litigated, and all parties were involved and necessarily so in the manner in which the injury was received. Proctor v. Ingalls Shipbuilding Corp., 254 Miss. 907, 183 So. 2d 483 (1966).

The time within which an award affirmed by the supreme court must be paid in order to avoid the statutory penalty runs from the time a suggestion of error was overruled, and not from the subsequent issue of the court's mandate. Decker v. Bryan Bros. Packing Co., 249 Miss. 6, 162 So. 2d 648 (1964).

Where the attorney-referee and commission had adjudicated liability for compensation benefits as to the insured member of a partnership and his insurance carrier, the failure to adjudicate the liability of the uninsured partner, who was also liable for payment of the compensation, gave the insurance carrier an appealable interest in the correctness of the commission's order; hence, the order of the commission was modified so as to adjudicate the liability for payment and compensation against the uninsured partner in addition to the insured partner's carrier. United States Fid. & Guar. Co. v. Collins, 231 Miss. 319, 95 So. 2d 456 (1957), corrected, 231 Miss. 341, 96 So. 2d 456 (1957).

48. Immunity.

Decedent's employer was not entitled to immunity from suit under Miss. Code Ann. § 71-3-7 because it did not indirectly secure workers compensation coverage for its employees by reimbursing a timber company, for whom the employer was a subcontractor, for the workers compensation coverage it obtained for the employer's employees. The court rejected the employer's argument that it was entitled to "down-the-line" immunity because it assumed that it was the legislative intent not to create this immunity. Lamar v. Thomas Fowler Trucking, Inc., 956 So. 2d 911 (Miss. Ct. App. 2006), affirmed by 956 So. 2d 878, 2007 Miss. LEXIS 279 (Miss. 2007).

ATTORNEY GENERAL OPINIONS

County jail inmates working on city property are not "employees" within meaning of Section 71-3-7 so as to render city liable for worker's compensation coverage of such individuals. Navarro, July 29, 1992, A.G. Op. #92-0555.

Workers' compensation would cover the expenses for employees who become ill as a result of smallpox vaccination, and the fact that the vaccine is not licensed when administered would not affect the coverage. Thompson, Sept. 18, 2002, A.G. Op. #02-0549.

RESEARCH REFERENCES

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Suicide as compensable under Workmen's Compensation Act. 15 A.L.R.3d 616.

Insured's receipt of or right to workmen's compensation benefits as affecting recovery under accident, hospital, or medical expense policy. 40 A.L.R.3d 1012.

Workmen's compensation: injury or death due to storms. 42 A.L.R.3d 385.

Liability of one causing physical injuries as a result of which injured party attempts or commits suicide. 77 A.L.R.3d 311.

Workers' compensation: sexual assaults as compensable. 52 A.L.R.4th 731.

Right to jury trial in action for retaliatory discharge from employment. 52 A.L.R.4th 1141.

Workers' compensation: incarceration as terminating benefits. 54 A.L.R.4th 241.

Workers' compensation: injuries incurred while traveling to or from work with employer's receipts. 63 A.L.R.4th 253.

Workers' compensation: effect of allegation that injury was caused by, or occurred during course of, worker's illegal conduct. 73 A.L.R.4th 270.

Workers' compensation: compensability of injuries incurred traveling to or from medical treatment of earlier compensable injury. 83 A.L.R.4th 110.

Worker's compensation: coverage of injury occurring in parking lot provided by employer, while employee was going to or coming from work. 4 A.L.R.5th 443.

Worker's compensation: coverage of injury occurring between workplace and parking lot provided by employer, while employee is going to or coming from work. 4 A.L.R.5th 585.

Workers' compensation: compensability of injury during tryout, employment test, or similar activity designed to determine employability. 8 A.L.R.5th 798.

Right to workers' compensation for injuries suffered after termination of employment. 10 A.L.R.5th 245.

Workers' compensation: coverage of employer's injury or death from exposure to the elements—modern cases. 20 A.L.R.5th 346.

Presumption or inference that accidental death of employee engaged in occupation of manufacturing or processing arose out of and in course of employment. 47 A.L.R.5th 801.

Workers' compensation as precluding employee's suit against employer for sexual harassment in the workplace. 51 A.L.R.5th 163.

Right to Workers' Compensation For Emotional Distress or Like Injury Suffered by Claimant as Result of Sudden Stimuli Involving Nonpersonnel Action — Compensability Under Particular Circumstances. 84 A.L.R.5th 249.

Right to workers' compensation for emotional distress or like injury suffered by claimant as a result of sudden emotional stimuli involving personnel action. 82 A.L.R.5th 149.

Right to workers' compensation for emotional distress or like injury suffered by claimant as result of nonsudden stimuli — Requisites of, and factors affecting, compensability. 106 A.L.R.5th 111.

Right to workers' compensation for physical injury or illness suffered by claimant as result of sudden mental stimuli — Compensability under particular circumstances. 107 A.L.R.5th 441.

Right to workers' compensation for emotional distress or like injury suffered by claimant as result of nonsudden stimuli — Compensability under particular circumstances. 108 A.L.R.5th 1.

Right to workers' compensation for physical injury or illness suffered by claimant as result of sudden mental stimuli — Right to compensation under particular statutory provisions and requisites of, and factors affecting, compensability. 109 A.L.R.5th 161.

Right to workers' compensation for physical injury or illness suffered by claimant as result of nonsudden mental stimuli — Compensability of particular physical injuries or illnesses. 112 A.L.R.5th 509.

Compensability under occupational disease statutes of emotional distress or like injury suffered by claimant as result of nonsudden stimuli. 113 A.L.R.5th 115.

Right to workers' compensation for physical injury or illness suffered by claimant as result of nonsudden mental stimuli — Requisites of, and factors affecting, compensability. 13 A.L.R.6th 209.

Right to workers' compensation for injury suffered by worker en route to or from worker's home where home is claimed as "work situs." 15 A.L.R.6th 633.

Am Jur. 82 Am. Jur. 2d, Workers' Compensation §§ 192 et seq.

82 Am. Jur. 2d, Workers' Compensation §§ 413 et seq.

28 Am. Jur. Proof of Facts 213, Employee's Injury or Death from Tornado or Other Violent Windstorm.

30 Am. Jur. Proof of Facts 183, Employee's Injury or Death from Natural Phenomena — Lightning.

10 Am. Jur. Proof of Facts 2d 505, Accident Occurring in Course of Employment-"Dual Purpose" Doctrine.

10 Am. Jur. Proof of Facts 3d 669, Worker's Compensation — Compensable Coronary Episode (Heart Attack).

10 Am. Jur. Proof of Facts 3d 757, Peripheral and Cranial Nerve Injury Due to Trauma.

11 Am. Jur. Proof of Facts 3d 1, Dental Injuries.

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§ 71-3-9. Exclusiveness of liability.

The liability of an employer to pay compensation shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next-of-kin, and anyone otherwise entitled to recover damages at common law or otherwise from such employer on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this chapter, an injured employee, or his legal representative in case death results from the injury, may elect to claim compensation under this chapter, or to maintain an action at law for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, nor that the employee assumed the risk of his employment, nor that the injury was due to the contributory negligence of the employee.

SOURCES: Codes, 1942, § 6998-05; Laws, 1948, ch. 354, § 5; reenacted without change, Laws, 1982, ch. 473, § 5; reenacted without change, Laws, 1990, ch. 405, § 5, eff from and after July 1, 1990.

Cross References — Application of this section to actions by and against electric utilities arising out of injuries resulting from contact with high voltage overhead lines, see § 45-15-13.

JUDICIAL DECISIONS

1. In general.
2. Election to sue.
3. Employer-employee relationship.
4. Action against compensation carrier.
5. Action for wrongful death.
6. Third-party action.
7. Willful acts of employer or co-employee.
8. Negligent infliction of emotional distress.
9. Immunity extended to co-workers.

1. In general.

Language in the uninsured motorist statute, Miss. Code Ann. § 83-11-101, as well as the insured's UM policy, required that the insured be legally entitled to recover from the owner or operator of the uninsured vehicle; since that insured could not bring a legal action against the co-employee at the time of the accident under Miss. Code Ann. § 71-3-9, he was not entitled to recover UM benefits from his insurer. Steen v. Metro. Prop. & Cas. Ins. Co., 858 So. 2d 186 (Miss. Ct. App. 2003).

Employee's claim against his employer for bad faith failure to pay worker's compensation benefits was not barred by the exclusivity provision in Miss. Code Ann. § 71-3-9 after a settlement of the claim had been approved by the Mississippi Workers' Compensation Commission. Miss. Power & Light Co. v. Cook, 832 So. 2d 474 (Miss. 2002).

Movie production company was not liable to its purported employees as the actress suing for benefits after she settled with the movie production company on her workers' compensation claim did not show the purported employees were not her co-employees who enjoyed, pursuant to Miss. Code Ann. § 71-3-9, the same immunity the movie production company received once it settled its workers' compensation claim with her. Wingerter v. Bhd. Prods., Inc., 822 So. 2d 300 (Miss. Ct. App. 2002).

Material issue of fact existed as to whether physician was employee of hospital, precluding summary judgment based on exclusivity of Workers' Compensation Act in third party action by hospital against corporation that provided physician, arising out of malpractice claim against physician and hospital brought by patient who was claimed to be hospital employee. Russell v. Orr, 700 So. 2d 619 (Miss. 1997).

Material issue of fact existed as to whether patient was employee of hospital, precluding summary judgment for physician and hospital on patient's malpractice claim based on exclusivity of Workers' Compensation Act. Russell v. Orr, 700 So. 2d 619 (Miss. 1997).

Even if physician and patient were employees of hospital, material issue of fact existed as to whether patient sought treatment as member of general public or in course of her employment, precluding summary judgment for physician and hospital on patient's malpractice claim based on co-employee status or exclusivity feature of Workers' Compensation Act. Russell v. Orr, 700 So. 2d 619 (Miss. 1997).

Prime contractor was statutory employer of sub-subcontractor's employee, and thus, was immune from liability under Workers' Compensation Act's exclusivity of remedy provision in negligence action brought by injured employee, where sub-subcontractor provided compensation coverage to its employees pursuant to its contract with prime contractor. Salyer v. Mason Technologies, Inc., 690 So. 2d 1183 (Miss. 1997).

Employees covered for workers' compensation by a temporary employment agency were barred by the exclusive remedy provisions of the Workers' Compensation Act from recovering against the entity for which the services were actually performed. Northern Elec. Co. v. Phillips, 660 So. 2d 1278 (Miss. 1995).

The existence of a contract for indemnity changes the applicability of the exclusivity provision of the Workers' Compensation Act; the enforcement of an indemnity clause which was freely entered into does not impugn the beneficent purposes of the Act because the employee will still be compensated. Heritage Cablevision v. New Albany Elec. Power Sys., 646 So. 2d 1305 (Miss. 1994).

It was not necessary to join Mississippi city as "phantom party" defendant in suit by city employee alleging injury as result of corporation's release of certain substances into city sewer system, so that jury could fully apportion fault under § 85-5-7 even though plaintiff could not sue city directly and corporation could not seek contribution from city, as result of mandate of § 71-3-9. Statute did not contain clear command that alleged joint-tortfeasors be joined in such a way. White v. Esmark Apparel, Inc., 788 F. Supp. 907 (N.D. Miss. 1992), aff'd, 44 F.3d 1005 (5th Cir. 1995).

Exclusivity provisions of Workers' Compensation Act preclude consortium claim by wife of injured claimant in actions falling within scope of Act. Stevens v. FMC Corp., 515 So. 2d 928 (Miss. 1987).

Intent of legislature was that any common-law recovery or settlement was to be credited toward employer's or insurer's liability; liability cannot be imposed on employer under both common-law and Workers' Compensation Act, as entitlement to one excludes other; decedent was either injured while acting in course and scope of employment thereby making employer liable under Worker's Compensation Act, or was injured while not acting in course of employment thereby possibly rendering employer liable under common-law negligence liability; therefore, sums paid in settlement of common-law action against employer and co-employees are to be credited against employer's obligation under Worker's Compensation Act. Sawyer v. Head, 510 So. 2d 472 (Miss. 1987).

An electrician who was employed by two companies simultaneously was not entitled to a judgment in an action for personal injuries against one of the companies where he had obtained settlement of a workman's compensation claim against the second company. Ray v. Babcock & Wilcox Co., 388 So. 2d 166 (Miss. 1980).

The signing of an application for group insurance benefits is a factor to be considered in determining whether an injury was work connected or arose out of a pre-existing condition, but it is not per se a bar to a claim under the Workmen's Compensation Law where the facts are in dispute. Central Elec. & Mach. Co. v. Shelton, 220 So. 2d 320 (Miss. 1969).

The requirement that an employer must secure payment of compensation means that he must have in effect an insurance policy complying with the Workmen's Compensation Law, or that he must qualify as a self-insurer. Taylor v. Crosby Forest Prods. Co., 198 So. 2d 809 (Miss. 1967).

Where the employer secured the payment of compensation to his employees by qualifying as a self-insurer, the remedy of an employee arises only under the Workmen's Compensation Law, and that statutory remedy being exclusive, no action at law is available to the employee. Taylor v. Crosby Forest Prods. Co., 198 So. 2d 809 (Miss. 1967).

A claim for disability under the compensation law is not a suit to recover damages growing out of an industrial injury, but is compensation for loss of earnings as a result of an industrial injury, or the loss to the dependents of a worker because of his death. Thyer Mfg. Co. v. Mooney, 252 Miss. 629, 173 So. 2d 652 (1965).

An employer's liability under the Workmen's Compensation Law is not affected by his failure to obtain insurance. Dawson's Dependents v. Delta W. Exploration Co., 245 Miss. 335, 147 So. 2d 485 (1962).

This section [Code 1942, § 6998-05] deprives the employee of his common-law right of action against the employer for compensatory damages. L.B. Priester & Son v. Bynum's Dependents, 244 Miss. 196, 142 So. 2d 30 (1962), overruled on other grounds, Wilson v. Mississippi Emp. Sec. Comm'n, 643 So. 2d 538 (Miss. 1994).

An employer's purchase of a $5,000 policy on the life of an employee did not release him from liability to the widow and dependents of the employee for benefits they were entitled to under the Workmen's Compensation Law following the death of the employee in the course of employment. Riddell v. Cagle's Estate, 227 Miss. 305, 85 So. 2d 926 (1956).

Immunity to common-law suits is extended to statutory employers who come within the provisions of Code 1942, § 6998-04. Mosley v. Jones, 224 Miss. 725, 80 So. 2d 819 (1955).

2. Election to sue.

Because the court of appeals decided as a matter of law that the employee was acting in the course and scope of his employment when he was injured, that his injuries were not the result of an intentional tort, and that his injuries were compensable under the Mississippi Workers' Compensation Act, the exclusivity provision of the act barred his tort claims against the employer, and the trial court erred when it denied the employer's motion for summary judgment. Hurdle v. Holloway, 848 So. 2d 183 (Miss. 2003).

Wrongful death action was remanded because there was an arguably reasonable basis that a sub-subcontractor who did not have workers' compensation insurance, but whose employees were covered by a statutory employer, was not entitled to the protection of the Workers' Compensation Act's exclusivity provision, Miss. Code Ann. § 71-3-9, and thus was not fraudulently joined. Culpepper v. Double R, Inc., 269 F. Supp. 2d 739 (S.D. Miss. 2003).

Remand was denied because claims against resident managers for personal injuries from exposure to vinyl chloride were actually negligence claims barred by the exclusivity provision of the Mississippi Workers' Compensation Act, Miss. Code Ann. § 71-3-9, and thus the managers were fraudulently joined. Frye v. Airco, Inc., 269 F. Supp. 2d 743 (S.D. Miss. 2003).

Two elements were necessary for an injured employee to avoid the Mississippi workers' compensation exclusive liability provision: (1) the injury must have been caused by the willful act of another employee acting in the course of employment and in furtherance of the employee's business, and (2) the injury had to be one that was not compensable under the Workers' Compensation Act; where the elements were met, then it was appropriate to pursue a claim outside of the confines of the statute. Lewallen v. Slawson, 822 So. 2d 236 (Miss. 2002).

Claimant may not collect on tort claim against employer or co-employee if evidence shows he is entitled to worker's compensation benefits arising out of same occurrence, although there is nothing wrong with pursuing both remedies when benefits under both are denied. Sawyer v. Head, 510 So. 2d 472 (Miss. 1987).

The Workmen's Compensation Law affords the exclusive remedy as between employers and employees, except that a claimant, if the employer does not secure compensation, may elect to claim benefits under the Law or sue at law, and if the latter course is pursued the negligence of a fellow servant, the assumption of risk, and contributory negligence cannot be interposed as defenses. Riddell v. Cagle's Estate, 227 Miss. 305, 85 So. 2d 926 (1956).

The Workmen's Compensation Law does not make good faith of an employer in attempting to secure compensation insurance the test in determining whether an employee can sue at common law. McCoy v. Cornish, 220 Miss. 577, 71 So. 2d 304 (1954).

When accident happened to an employee, the employer had no compensation insurance and did not apply to the commission for a policy under the assigned risk plan, the employee had a right to bring a common-law action for damages in view of the fact that the employer failed to comply with the Workmen's Compensation Law. McCoy v. Cornish, 220 Miss. 577, 71 So. 2d 304 (1954).

3. Employer-employee relationship.

Because the subcontractor could not be considered an "employee" of the department store company, it was not entitled to tort immunity under the exclusivity provision of the Workers' Compensation Act, Miss. Code Ann. § 71-3-9. The subcontractor was in a much better position than a mere employee to distribute the cost of potential tort liability within the enterprise, as the subcontractor could include in its contract bid a price increase which reflected possible tort liability which would be passed on to the company as a cost of doing business. Durr v. MBS Constr. Corp., — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 84398 (S.D. Miss. Sept. 10, 2009).

Because defendant office owner lacked the control over plaintiff worker required to show an employment relationship and merely had a customer relationship with the worker's employer cleaning service, the dual employment and borrowed servant doctrines did not apply and the owner had no immunity under Miss. Code Ann. § 71-3-9 as to the worker's injury. Mims v. Renal Care Group, Inc., 395 F. Supp. 2d 458 (S.D. Miss. 2005), vacated by, remanded by 399 F. Supp. 2d 740, 2005 U.S. Dist. LEXIS 41099 (S.D. Miss. 2005).

Trial court's judgment was reversed and rendered to remove the jury's allocation of contributory negligence as the employer conceded on appeal that the individual was an employee, and contributory negligence was not available as a defense under Miss. Code Ann. § 71-3-9 as the employer had not maintained workers' compensation insurance. Renfroe v. Berryhill, 910 So. 2d 624 (Miss. Ct. App. 2005).

Where the decedent's employer agreed under the subcontract with the contractor to provide workers' compensation coverage to the employees, and the employer did so, the contractor was entitled to summary judgment pursuant to Miss. R. Civ. P. 56 in the decedent's heirs' wrongful death action; construing Miss. Code Ann. § 71-3-7, relating to a contractor's obligation to provide workers' compensation coverage, and Miss. Code Ann. § 71-3-9, the workers' compensation exclusivity provision, together, it was determined that where the employer provided compensation coverage to its employees pursuant to the contract with the contractor, the contractor qualified as a statutory employer and was immune from tort liability claims by the heirs. Thornton v. W. E. Blain & Sons, Inc., 878 So. 2d 1082 (Miss. Ct. App. 2004).

Prime contractor was statutory employer of sub-subcontractor's employee, and thus, was immune from liability under Workers' Compensation Act's exclusivity of remedy provision in negligence action brought by injured employee, where sub-subcontractor provided compensation coverage to its employees pursuant to its contract with prime contractor. Salyer v. Mason Technologies, Inc., 690 So. 2d 1183 (Miss. 1997).

The defendant was the plaintiff's statutory employer for purposes of the exclusivity provision of the Workers' Compensation Act (§ 71-3-9) where (1) the plaintiff was originally employed by a temporary employment agency, which placed her in the job with the defendant, (2) the defendant controlled the performance of the work, the plaintiff acquiesced in the situation, and the plaintiff's original employer temporarily terminated its relationship with the plaintiff while she worked for the defendant, (3) the defendant furnished the premises and materials necessary for the plaintiff's work, (4) the defendant had a right to discharge the plaintiff, and (5) the plaintiff was paid by her original employer, which passed the costs on to the defendant. Honey v. United Parcel Serv., 879 F. Supp. 615 (S.D. Miss. 1995).

Representatives of deceased employee were not barred by exclusiveness of remedies provision in Miss Code § 71-3-9 from maintaining action against wholly-owned subsidiary of decedent's employer for negligence, where parties presented no evidence suggesting that subsidiary's corporate identity should be disregarded because of fraud or injustice and facts did not present proper question of piercing corporate veil because subsidiary was being sued for its own acts of alleged negligence, and not acts of parent company. Porter v. Beloit Corp., 667 F. Supp. 367 (S.D. Miss. 1987).

Injured employee may not circumvent Workers' Compensation Act on basis of dual capacity doctrine; employer is not liable in tort to injured employee when employer assumes identity separate and apart from role as employer; employer who designs, manufactures or distributes product used by its employees cannot be held liable to injured employee on theory of products liability. Rader v. United States Rubber Reclaiming Co., 617 F. Supp. 1045 (S.D. Miss. 1985).

General contractor and subcontractor were entitled to immunity under exclusive remedy provision of workers' compensation statute in negligence action brought against them by employee of sub-subcontractor, where sub-subcontractor had workers' compensation insurance for its injured employees. Crowe v. Brasfield & Gorrie Gen. Contractor, 688 So. 2d 752 (Miss. 1996), reh'g denied, 691 So. 2d 1027 (Miss. 1997).

A pipeline operator which contracted with an injured welder's employer for the construction of a pipeline was not immune from tort liability on the ground of the "statutory employer" defense; since the pipeline operator was not a "contractor," and because the employer had secured compensation for the welder's benefit, the Workers' Compensation Act imposed no duty on the pipeline operator and, accordingly, the pipeline operator enjoyed no benefits under the Act. The pipeline operator could not gain tort immunity by assuming compensation obligations which in fact and in law it did not have. Magee v. Transcontinental Gas Pipe Line Corp., 551 So. 2d 182 (Miss. 1989).

Negligence action by employee of drilling company who was injured when part of drilling rig fell on him, against company which transported rig to drilling site, is precluded by exclusive remedy provision of Mississippi Workers' Compensation Act (§§ 71-3-1 et seq.), since transport company employees were "loaned servants" of drilling company, and since any negligence attributable to transport company employees occurred while they were under supervision of drilling company. Taylor v. Kay Lease Serv., Inc., 761 F.2d 1107 (5th Cir. 1985).

A convenience store clerk, who was raped in the course of a store robbery, was injured as a consequence of conditions brought about by risks of the work environment, and thus her exclusive remedy was under Miss Code § 71-3-9. Williams v. Munford, Inc., 683 F.2d 938 (5th Cir. 1982).

Notwithstanding substantial doubt as to the assertion of the defendant driver that the plaintiff passengers were in his employ at the time of the collision, evidence, including receipt by the plaintiff of substantial compensation benefits, warranted a jury submission on their employment status, which was critical to a determination whether the rights of the plaintiffs were limited by the Workmen's Compensation Law and whether an employer-employee relationship was an absolute bar to their Mississippi damage suit. Dicks v. Cleaver, 433 F.2d 248 (5th Cir. 1970).

A defendant who has successfully defended an action for personal injuries, resulting from a beating the plaintiff received from defendant's foreman, on the ground that the relationship of employer-employee existed between defendant and plaintiff, cannot thereafter challenge the applicability of the Workmen's Compensation Law to the plaintiff's claim; provided claim for benefits is timely filed within the time extended by Code 1942, § 6998-18(c) beginning with the date of the order dismissing plaintiff's appeal. Seal v. Industrial Elec., Inc., 395 F.2d 214 (5th Cir. 1968).

The exclusive remedy of the plaintiff truck driver for injuries sustained as a consequence of a collision with a truck owned by the defendant gravel pit owner was under the Workmen's Compensation Law, where the plaintiff was employed by a truck owner who had contracted to haul sand and gravel for the gravel pit owner under an oral agreement terminable at will by either party and under which the pit owner determined the time, place, method of loading, the destination of trucks, and the method of furnishing evidence of delivery, and the pit owner and the truck owner both carried workmen's compensation insurance; for an employer-employee relationship existed between the pit owner and the injured truck driver. Stubbs v. Green Bros. Gravel Co., 206 So. 2d 323 (Miss. 1968).

The immunity from tort liability conferred by this section [Code 1942, § 6998-05] does not extend to a corporation owned by the owners of the employer corporation and engaged in related activities. Index Drilling Co. v. Williams, 242 Miss. 775, 137 So. 2d 525, 8 A.L.R.3d 323 (1962).

Immunity from tort liability does not exist in the case of injury to a loaned employee with whom no contract of hire has been made. Index Drilling Co. v. Williams, 242 Miss. 775, 137 So. 2d 525, 8 A.L.R.3d 323 (1962).

Whether the relation between the mover of oil well drilling equipment and a member of the driller's crew who was injured while lending a hand to the mover in placing equipment was that of master and servant, so as to preclude an action for negligence, held to be for trier of the fact. Clark v. Luther McGill, Inc., 240 Miss. 509, 127 So. 2d 858 (1961).

A solicitor of magazine subscriptions was not precluded by this section [Code 1942, § 6998-05] from bringing an action against her employer for the alleged assault and battery committed upon her by another alleged employee, since under subsection (4) of Code 1942, § 6998-02 [now subsection (d) of Code 1972, § 71-3-3], the solicitor was not an employee. Richards v. Blaine, 234 Miss. 519, 107 So. 2d 101 (1958); Statham v. Blaine, 234 Miss. 649, 107 So. 2d 93 (1958), motion granted, 234 Miss. 669, 108 So. 2d 213 (1959).

4. Action against compensation carrier.

The statute does not bar a claim by an employee against the employer's insurance carrier for the bad faith refusal to pay workers' compensation benefits. Liberty Mut. Ins. Co. v. McKneely, — So. 2d —, 2001 Miss. App. LEXIS 157 (Miss. Ct. App. Apr. 17, 2001), reversed by 862 So. 2d 530, 2003 Miss. LEXIS 691 (Miss. 2003).

Under Mississippi law, proof of intentional tort is required to circumvent exclusive remedies available under Workers' Compensation Law; allegations sounding in negligence are inadequate. Rogers v. Hartford Acc. & Indem. Co., 133 F.3d 309 (5th Cir. 1998).

Physician who settled with plaintiff during trial of medical malpractice action should not have been mentioned at all in judgment with respect to remaining defendants, though that physician was included in special interrogatories submitted to jury for purposes of determining damages and apportioning fault among defendants, where physician had been dismissed from action via agreed order of dismissal with prejudice. Krieser v. Baptist Mem. Hosp.-N. Miss., 984 F. Supp. 463 (N.D. Miss. 1997).

Under Mississippi law, nonsettling defendant, which was found 50% liable for patient's death in medical malpractice action, was responsible for $100,000 of $200,000 verdict and was not entitled to credit for $650,000 settlement which plaintiff had reached during trial with another defendant; crediting nonsettling defendant with settlement would undermine intention of jury to hold nonsettling defendant accountable and would violate public policy. Krieser v. Baptist Mem. Hosp.-N. Miss., 984 F. Supp. 463 (N.D. Miss. 1997).

Exception to exclusivity of Workers Compensation Act remedy has been held to exist in actions by injured employees against carriers for independent intentional torts, but in those cases alleged tortious conduct occurred independent of and subsequent to workplace injury. Stevens v. FMC Corp., 515 So. 2d 928 (Miss. 1987).

An employee's action, charging bad faith, malice and an intentional tort in failing to pay compensation for injuries adjudicated to be compensable, could be maintained against a worker's compensation carrier and its agent, notwithstanding the provisions of § 71-3-9. Leathers v. Aetna Cas. & Sur. Co., 500 So. 2d 451 (Miss. 1986).

The exclusive remedy provision of the Mississippi Worker's Compensation Act does not preclude a claimant's action against an insurance carrier based on the carrier's independent and alleged tortious breach of contract. McCain v. Northwestern Nat'l Ins. Co., 484 So. 2d 1001 (Miss. 1986).

Exclusivity provision of Workers' Compensation Act (§ 71-3-9) does not bar action by injured worker against carrier, predicated upon carrier's intentional refusal to pay workers' compensation medical and weekly compensation benefits notwithstanding admitted residual permanent disability. Southern Farm Bureau Cas. Ins. Co. v. Holland, 469 So. 2d 55 (Miss. 1984).

5. Action for wrongful death.

Record sufficiently evinced that a convenience store owner had secured payment of compensation to its statutory employees as required by the Mississippi

Workers' Compensation Act, and was thus immune from the decedent's daughter's wrongful death claim, where the daughter did not dispute that the owner had effective workers' compensation insurance for its employees at the relevant time, the owner had provided notice to the insurance carrier of the death, but the decedent's beneficiaries claimed that he was not an employee. Washington v. Tem's Junior, Inc., 981 So. 2d 1047 (Miss. Ct. App. 2008).

Daughter of decedent, who was killed while hauling logs for a subcontractor, was not entitled to bring a workers' compensation claim, pursuant to Miss. Code Ann. § 71-3-9 because workers' compensation payments were the exclusive remedy, and subcontractor had secured payment of compensation in compliance with Miss. Code Ann. § 71-3-7. Lamar v. Thomas Fowler Trucking, Inc., 956 So. 2d 878 (Miss. 2007).

Decedent's employer was not entitled to immunity from suit under Miss. Code Ann. § 71-3-7 because it did not indirectly secure workers compensation coverage for its employees by reimbursing a timber company, for whom the employer was a subcontractor, for the workers compensation coverage it obtained for the employer's employees. The court rejected the employer's argument that it was entitled to "down-the-line" immunity because it assumed that it was the legislative intent not to create this immunity. Lamar v. Thomas Fowler Trucking, Inc., 956 So. 2d 911 (Miss. Ct. App. 2006), affirmed by 956 So. 2d 878, 2007 Miss. LEXIS 279 (Miss. 2007).

Employer was properly granted summary judgment in the decedent's daughter's wrongful death action because the daughter had already elected her remedy at the time she filed her lawsuit under Miss. Code Ann. § 71-3-9 by accepting and failing to return the workers compensation benefits paid by the timber company, for whom the employer was a subcontractor. Lamar v. Thomas Fowler Trucking, Inc., 956 So. 2d 911 (Miss. Ct. App. 2006), affirmed by 956 So. 2d 878, 2007 Miss. LEXIS 279 (Miss. 2007).

Assertion by the administrator of an employee's estate that an employer's failure to act for the employee's protection, in the face of information about a co-worker who went on a shooting rampage was an intentional tort so that the exclusivity bar of Mississippi's Workers' Compensation Act was inapplicable found no support in the law; a mere willful and malicious act was insufficient to give rise to the intentional tort exception because there needed to be a finding of an "actual intent to injure" and reckless or grossly negligent conduct was not enough to remove a claim from the exclusivity of the Act. Tanks v. Lockheed-Martin Corp., 332 F. Supp. 2d 953 (S.D. Miss. 2004).

A groundskeeper's aid was not acting within the scope of his employment when he drowned in a swimming pool, and therefore his parents were not barred by the exclusive remedy provisions of the Mississippi Workers' Compensation Act from bringing a wrongful death action on his behalf, where the employee was not required by his job duties to be in the vicinity of the swimming pool, he was supposed to be hoeing grass from a sidewalk outside the fence surrounding the pool at the time he entered the pool area, and the employer had specifically instructed the employee to stay away from the pool because he could not swim. Estate of Brown v. Pearl River Valley Opportunity, Inc., 627 So. 2d 308 (Miss. 1993).

Mother of decedent was not entitled to bring wrongful death action where decedent was killed when he was struck by car while working on highway project; contention that wrongful death statute controlled over Workers' Compensation provision which provided that it would be exclusive remedy was rejected; argument that because mother was not dependent on decedent, exclusive remedy provision in death benefit cases did not apply was also rejected, because act intended to provide exclusive remedy growing out of employer-employee relationship, and different result would subject employer in many instances to double liability. Estate of Morris v. W.E. Blain & Sons, 511 So. 2d 945 (Miss. 1987).

Under § 71-3-15, neither an employer nor its carrier was liable for the full amount of an insured's medical bill incurred after his arrival in Illinois, where it was not shown that he requested his employer to furnish further medical care, that the employer refused or neglected further medical treatment, or that there was any emergency or any interest of justice established which would excuse the failure to forward to the employer a medical report within 20 days after the first treatment by the Chicago physician. Strickland v. M.H. McMath Gin, Inc., 457 So. 2d 925 (Miss. 1984).

The survivors of a deceased worker who died by suffocation in a soybean bin while in the course of his employment were barred by the Workmen's Compensation Act from maintaining a wrongful death action against the employer's general manager, whose alleged negligence had contributed to the employee's death; an officer or agent of a corporation who is acting within the scope of his authority for and on behalf of the corporation comes within the purview of the act and is entitled to the immunity it provides. Thus, the survivors' exclusive remedy was workmen's compensation. Brown v. Estess, 374 So. 2d 241 (Miss. 1979).

A wrongful death action was properly dismissed as against certain of decedent's fellow employees where the decedent was covered by the Workmen's Compensation Act; as to decedent's employer and its insurer, the trial court erred in not granting their demurrers and motions to dismiss where the employer, under § 71-3-9, was not subject to suit and where the declaration, which only sought to have the insurer assert any claim it might have, did not state a cause of action against the insurer; the trial court also erred in setting a thirty day time limit within which the employer and its insurer were required to exercise their option to intervene in the suit as party plaintiffs based on their having paid benefits to decedent's widow. McCluskey v. Thompson, 363 So. 2d 256 (Miss. 1978).

Where an employee, paid by a pipeline contractor, was also an employee of the pipeline owner and of the company in charge of the engineering and construction of a project as the agent for the owner at the time of the employee's accidental death, the Workmen's Compensation Law provided the exclusive remedy for his heirs and dependents, who could not then maintain a wrongful death action in tort against the owner or the engineering company. Biggart v. Texas E. Transmission Corp., 235 So. 2d 443 (Miss. 1970).

Where the administratrix had made an election to sue for the death of her decedent under Code 1942, § 1453, the mere reference to the Workmen's Compensation Law did not serve to convert the case to one based upon tort and the Law, so that the next of kin and beneficiaries would become necessary and indispensable parties, and the federal court was not deprived of jurisdiction based upon diversity of citizenship on the theory that such beneficiaries and indispensable parties were citizens of the same state as the defendant. Hordge v. Yeates, 157 F. Supp. 411 (S.D. Miss. 1957).

Where an amendment to the statute provided that if employer fails to secure the payment of workmen's compensation, the employee or the legal representative has the choice between claiming compensation or suing at law for damages and in that event, neither negligence of fellow servant, assumption of risk, nor contributory negligence can be pleaded, this amendment did not repeal the Workmen's Compensation Law and reinstate the right to maintain an action for wrongful death of an employee as in existence prior to the original enactment of the statute. Allen v. R.G. Le Tourneau, Inc., 220 Miss. 520, 71 So. 2d 447 (1954).

6. Third-party action.

As under Miss. Code Ann. § 71-3-9, the insured was not "legally entitled to recover" any damages from his employer or the co-employee who injured him in an auto accident, and he was not entitled under Miss. Code Ann. § 83-11-101(1) to recover uninsured motorist benefits from his private insurer for this accident. Wachtler v. State Farm Mut. Auto. Ins. Co., 835 So. 2d 23 (Miss. 2003).

Where a subcontractor has fewer than the number of employees required by Miss. Code § 71-3-9 to be liable for workmen's compensation payments to the employee, the general contractor will be liable for workmen's compensation payments but has immunity from tort suit brought by an employee of the exempt subcontractor. Nations v. SUNOCO, 695 F.2d 933 (5th Cir. 1983), reh'g denied, 705 F.2d 742 (5th Cir. 1983), cert. denied, 464 U.S. 893, 104 S. Ct. 239, 78 L. Ed. 2d 229 (1983).

Defendant in action by city employee for injuries sustained in car accident while employee was on duty cannot maintain third-party action against city for contribution under former Miss Code Anno § 85-5-5, as employee may not recover in tort against his employer due to exclusivity provisions of § 71-3-9. McClellan v. Poole, 692 F. Supp. 687 (S.D. Miss. 1988).

The existence of an express indemnity agreement between a cable television company which employed the claimant and a telephone company whose telephone pole broke causing the claimant to fall to the ground and become seriously injured while in the course of his employment, took the telephone company's action for indemnification against the employer outside the prohibition of Miss Code § 71-3-9. Lorenzen v. South Cent. Bell Tel. Co., 546 F. Supp. 694 (S.D. Miss. 1982), aff'd, 701 F.2d 408 (5th Cir. 1983).

Exclusive remedy provisions of Workers' Compensation Act preclude action by wife of injured employee for loss of consortium. West v. Plastifax, Inc., 505 So. 2d 1026 (Miss. 1987).

Requirement that contractor assure worker's compensation coverage for employees of subcontractor does not entitle contractor to defense under exclusiveness of liability statute (§ 71-3-9) where subcontractor has in fact obtained coverage. Nash v. Damson Oil Corp., 480 So. 2d 1095 (Miss. 1985).

Third party oil well owner which has been held liable to an employee of oil well contractor may not receive indemnity from the employer-contractor on a tort theory. Smith Petro. Serv., Inc. v. Monsanto Chem. Co., 420 F.2d 1103 (5th Cir. 1970).

The employee of an agent, operating a car rental business on behalf of his principal, is also the employee of the principal and could not, after receiving compensation benefits, maintain a third-party action against the principal. Robertson v. Stroup, 254 Miss. 118, 180 So. 2d 617 (1965).

7. Willful acts of employer or co-employee.

Given the considerable amount of testimony offered by the employees and the management personnel regarding the employer's refusal to install an appropriate ventilation system on the glue line despite its knowledge of the harmful effects of the neurotoxin contained in the adhesive the intentional tort exception under Miss. Code Ann. § 71-3-9 to the Mississippi Workers' Compensation Act. Miss. Code Ann. § 71-3-1 et seq., clearly applied. Franklin Corp. v. Tedford, 18 So. 3d 215 (Miss. 2009).

In a widow's bad-faith action against a workers' compensation insurance carrier, the carrier's conduct was the equivalent of an unreasonably delayed investigation that had no legitimate or arguable reason. Thus, the jury could have found that the carrier's habitually delayed "investigation" involving intentional choices to pass along duties was in reckless disregard of the consequences that the widow faced based on the carrier's failure to resolve her lump-sum order. AmFed Cos., LLC v. Jordan, 34 So. 3d 1177 (Miss. Ct. App. 2009).

Where the employees' injuries arose out of and in the course of employment, under Miss. Code Ann. § 71-3-3(b), their claims of battery and intentional infliction of emotional distress against the employer were not precluded by the Mississippi Workers' Compensation Act, Miss. Code Ann. § 71-3-9, as a matter of law. Franklin Corp. v. Tedford, — So. 3d —, 2009 Miss. LEXIS 169 (Miss. Apr. 16, 2009), opinion withdrawn by, substituted opinion at 18 So. 3d 215, 2009 Miss. LEXIS 426 (Miss. 2009).

Employee's claim that her former employer acted in bad faith in denying workers' compensation benefits under Miss. Code Ann. § 71-3-7, which benefits the employee later received via a settlement, failed because the employer had arguable reasons for its decision where an investigation into whether the employee's alleged sexual relationship with her manager ever occurred or was cause of the employee's mental health problems was inconclusive; that the employer stated in an earlier suit filed by the employee that her negligence claims were barred under the exclusive remedy provisions of Miss. Code Ann. § 71-3-9 did not mean that the employer acted in bad faith by advancing inconsistent positions, as the employer never conceded that the employee had a viable workers' compensation claim. Hood v. Sears Roebuck & Co., 532 F. Supp. 2d 795 (S.D. Miss. June 23, 2005), affirmed by 247 Fed. Appx. 531, 2007 U.S. App. LEXIS 21978 (5th Cir. Miss. 2007).

As an employee's complaint against his employer sounded in negligence, and Mississippi had the "most significant relationship" with the action, Mississippi, not Alabama, law applied. Therefore, the employer was immune from suit under Miss. Code Ann. § 71-3-9, as there was no evidence that the employee's injury was caused by its willful actions or that the injury was not compensable under the Mississippi Workers' Compensation Act. Powe v. Roy Anderson Constr. Co., 910 So. 2d 1197 (Miss. Ct. App. 2005), writ of certiorari denied en banc by 942 So. 2d 164, 2006 Miss. LEXIS 640 (Miss. 2006).

Employer's motion for summary judgment was denied because the court could find no argument under the present state of the law for dismissing a wrongful death action, arising out of a co-worker's shooting rampage, based on the exclusivity bar provision under Miss. Code Ann. § 71-3-9 of Mississippi's Workers' Compensation Act; there was nothing to suggest that, at the time of the shootings at the plant, the assailant was acting in the course and scope of his employment and in furtherance of his employer's business, or that his actions, which were certainly outside the course and scope of his employment, were directed against his victims because of their employment, and thus, the injury was not compensable under the Act, and the exclusivity bar did not apply. Tanks v. Lockheed-Martin Corp., 332 F. Supp. 2d 953 (S.D. Miss. 2004).

Where a widow whose husband died while working for a general contractor sued the contractor based on its alleged failure to properly repair damaged bolts, the trial court properly granted summary judgment to the contractor as its conduct was at most gross negligence or reckless indifference, which, as a matter of law, did not defeat the exclusivity provision of the workers' compensation statutes. Bevis v. Linkous Constr. Co., 2003 Miss. App. LEXIS 773, 856 So. 2d 535 (Miss. Ct. App. 2003), cert. denied, 860 So. 2d 1223 (Miss. 2003).

Although the employee had received workers' compensation medical benefits, this did not preclude compensation for damages that were not compensable under the Workers' Compensation Act because they were alleged to have been caused by wilful and intentional acts; the damages stemming from the assault and battery were not compensable because they stemmed from a wilful and intentional act, not a negligent or grossly negligent act. Davis v. Pioneer Inc., 834 So. 2d 739 (Miss. Ct. App. 2003).

Nothing in workers' compensation act made recovery for intentional torts and compensation benefits mutually exclusive and, to the contrary, it was never the intention of the act to bar an employee from pursuing a common law remedy for an injury that was the result of a willful and malicious act of a co-employee. Davis v. Pioneer Inc., — So. 2d —, 2002 Miss. App. LEXIS 407 (Miss. Ct. App. July 16, 2002), opinion withdrawn by, substituted opinion at 2003 Miss. App. LEXIS 61 (Miss. Ct. App. Jan. 14, 2003).

Where employee is injured in course of employment and seeks treatment from co-employee which aggravates injury, but employee can demonstrate that separate treatment was sought in plaintiff's capacity as member of general public, then any common law cause of action which arises as result of that treatment will not be excluded by exclusivity provisions of Workers' Compensation Act. Russell v. Orr, 700 So. 2d 619 (Miss. 1997).

Where employee is injured in course of employment and seeks treatment from co-employee which aggravates injury, question of fact arises as to whether sufficient nexus exists between plaintiff's status as employee and treatment sought for injury that would bring claim under Workers' Compensation Act exclusivity provisions. Russell v. Orr, 700 So. 2d 619 (Miss. 1997).

A mere willful and malicious act is insufficient to give rise to the intentional tort exception under the Workers' Compensation Act; thus, a workers' compensation claim would not be removed as an "intentional tort" from the exclusivity of the Act where the employer's conduct was merely "reckless, negligent, or grossly negligent," and there was no evidence that the employer acted "with actual intent to injure." Peaster v. David New Drilling Co., 642 So. 2d 344 (Miss. 1994).

In order for an injured employee to avoid the Mississippi workers' compensation exclusive liability provision, the injury must have been caused by the wilful act of another employee acting in the course of employment and in the furtherance of the employee's business, and the injury must be one that is not compensable under the act. Griffin v. Futorian Corp., 533 So. 2d 461 (Miss. 1988).

Claimant's exclusive remedy was benefits for accidental injury arising out of and in scope of employment under Mississippi Workers' Compensation Act; claimant was therefore barred from pursuing common-law tort remedy, where claimant had not presented credible evidence in support of claim of intentional tort by contending that employer intentionally directed its employees to misuse products in complete disregard to warning labels affixed thereto; employer pointed out that claimant stated that employer "negligently" failed to provide him with safe tools and thus his injuries proximately resulted from employer's "negligence." Stevens v. FMC Corp., 515 So. 2d 928 (Miss. 1987).

Store manager's husband, a store employee working in a service and maintenance capacity, who initiated a criminal embezzlement charge against the store cashier was an employee and not a third person within § 71-3-3(b), and the store cashier's malicious prosecution action predicated on husband's action was not precluded by the Worker's Compensation Act. Royal Oil Co. v. Wells, 500 So. 2d 439 (Miss. 1986).

Malicious prosecution is an intentional tort, and an action for malicious prosecution is within those rights of action an employee may maintain against his or her employer consistent with the Worker's Compensation Act. Royal Oil Co. v. Wells, 500 So. 2d 439 (Miss. 1986).

Exception to exclusivity principle exists where injury is caused by willful act of another employee acting in furtherance of employment and in furtherance of employer's business and injury is one which is not compensable under Workers' Compensation Act; derrick hand who suffered injury in fall from drilling rig is limited to workers' compensation remedy since fall is type of injury contemplated by statute, even though employee alleged that safety belts were not available. Mullins v. Biglane Operating Co., 778 F.2d 277 (5th Cir. 1985).

Exclusivity provision of § 71-3-9 does not bar court action by employee against employer based upon employer's intentional, bad faith refusal to comply with duty to pay compensation. Luckett v. Mississippi Wood Inc., 481 So. 2d 288 (Miss. 1985).

Under §§ 71-3-9 and 71-3-3(b), an employee's claim for damages resulting from false imprisonment by her employer was not barred by the exclusivity of the remedies available under the Workmen's Compensation Act, since the Act governs only injuries compensable under it, since injuries sustained as the result of a false imprisonment are not the result of accident, but rather arise from a willful act, which injuries are compensable under the Act only if caused by the willful act of a third person, and since the term "third person" refers either to a stranger to the employer-employee relationship, or to a fellow employee acting outside the course and scope of his employment; thus, a declaration alleging that an employee was falsely imprisoned by the head of her employer's security department, and questioned concerning an amount of money missing from her department, was improperly dismissed. Miller v. McRae's, Inc., 444 So. 2d 368 (Miss. 1984).

8. Negligent infliction of emotional distress.

Fast-food worker's state law claims for negligence per se and negligent infliction of emotional distress, alleged in conjunction with federal race discrimination and retaliatory discharge claims under Title VII, were barred by the exclusivity provision of the Mississippi Workers' Compensation statute. Means v. B & G Food

Enters., — F. Supp. 2d —, 2006 U.S. Dist. LEXIS 65835 (S.D. Miss. Sept. 13, 2006).

A claim for the negligent infliction of emotional distress against an employer is barred by this section. Disney v. Horton, — F. Supp. 2d —, 2000 U.S. Dist. LEXIS 5359 (N.D. Miss. Apr. 13, 2000).

9. Immunity extended to co-workers.

Trial court erred in denying defendants' motion for a change of venue in the injured motorist's action because the motorist's co-worker was fraudulently joined as a defendant to obtain venue in Smith County. The motorist's exclusive remedy against the co-worker was for workers' compensation benefits as provided under Miss. Code Ann. § 71-3-9, which extended immunity to co-workers as well as employers. Christian v. McDonald, 907 So. 2d 286 (Miss. 2005).

ATTORNEY GENERAL OPINIONS

Miss. Code Section 71-3-9 provides that liability of employer to pay compensation "shall be exclusive and in place of all other liability of such employer to the employee"; compensation referred to is workers' compensation benefits which are generally two-thirds of employee's average wage and payment for medical services and supplies. Michael, Mar. 19, 1993, A.G. Op. #93-0145.

Employee may elect to receive sick pay which is earned based upon past service at same time he is receiving workers' compensation benefits. Trosclair, Feb. 24, 1994, A.G. Op. #94-0062.

The Board of Trustees of the Pearl River County Library System may terminate an employee who is receiving worker's compensation benefits, and payment of a regular salary to an employee who is off work due to a job-related injury after their sick leave and personal leave have been exhausted constitutes an unauthorized donation. Tufaro, July 18, 1997, A.G. Op. #97-0415.

RESEARCH REFERENCES

ALR. Tort liability of worker's compensation insurer for wrongful delay or refusal to make payments due. 8 A.L.R.4th 902.

Employer's tort liability to worker for concealing workplace hazard or nature or extent of injury. 9 A.L.R.4th 778.

Workmen's Compensation Act as furnishing exclusive remedy for employee injured by product manufactured, sold, or distributed by employer. 9 A.L.R.4th 873.

Liability of employer with regard to inherently dangerous work for injuries to employees of independent contractor. 34 A.L.R.4th 914.

Workers' compensation: liability of successive employers for disease or condition allegedly attributable to successive employments. 34 A.L.R.4th 958.

Third-party tortfeasor's right to have damages recovered by employee reduced by amount of employee's workers' compensation benefits. 43 A.L.R.4th 849.

Workers' compensation law as precluding employee's suit against employer for third person's criminal attack. 49 A.L.R.4th 926.

Workers' compensation act as precluding tort action for injury to or death of employee's unborn child. 55 A.L.R.4th 792.

Willful, wanton, or reckless conduct of coemployee as ground of liability despite bar of workers' compensation law. 57 A.L.R.4th 888.

"Dual Capacity Doctrine" as basis for employee's recovery for medical malpractice from company medical personnel. 73 A.L.R.4th 115.

Workers' compensation: effect of allegation that injury was caused by, or occurred during course of, worker's illegal conduct. 73 A.L.R.4th 270.

Workers' compensation: third-party tort liability of corporate officer to injured workers. 76 A.L.R.4th 365.

Workers' compensation statute as barring illegally employed minor's tort action. 77 A.L.R.4th 844.

Breach of assumed duty to inspect property as ground for liability to third party. 13 A.L.R.5th 289.

Presumption or inference that accidental death of employee engaged in occupation of manufacturing or processing arose out of and in course of employment. 47 A.L.R.5th 801.

Workers' compensation as precluding employee's suit against employer for sexual harassment in the workplace. 51 A.L.R.5th 163.

Violation of employment rule as barring claim for workers' compensation. 61 A.L.R.5th 375.

Contractual waiver of exclusivity of workers' compensation remedy. 117 A.L.R.5th 441.

Postaccident conduct by employer, employer's insurer, or employer's employees in relation to workers' compensation claim as waiving, or estopping employer from asserting, exclusivity otherwise afforded by workers' compensation statute. 120 A.L.R.5th 513.

Federal Employees' Compensation Act (5 USCS §§ 8101 et seq.) as affecting recovery under Federal Tort Claims Act. 43 A.L.R. Fed. 424.

Right of injured employee entitled to compensation under Longshoremen's and Harbor Workers' Compensation Act (33 USCS §§ 901 et seq.) to recover from employer's insurance carrier for its negligence. 43 A.L.R. Fed. 695.

Am Jur. 82 Am. Jur. 2d, Workers' Compensation §§ 40, 41.

25 Am. Jur. Pl & Pr Forms (Rev), Workmen's Compensation, Forms 85, 91.

CJS. 99 C.J.S., Workmen's Compensation §§ 158-1591, 1593-1596 et seq.

Law Reviews. 1978 Mississippi Supreme Court Review: Administrative Law. 50 Miss. L. J. 11, March 1979.

1979 Mississippi Supreme Court Review: Administrative Law. 50 Miss. L. J. 699, December 1979.

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Practice References. Bender's Labor and Employment Bulletin (Matthew Bender).

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§ 71-3-11. Waiting period.

No compensation except medical benefits shall be allowed for the first five (5) days of the disability. In case the injury results in disability of fourteen (14) days or more, the compensation shall be allowed from the date of disability.

SOURCES: Codes, 1942, § 6998-06; Laws, 1948, ch. 354, § 6a; Laws, 1950, ch. 412, § 4; Laws, 1958, ch. 454, § 2; reenacted without change, Laws, 1982, ch. 473, § 6; reenacted without change, Laws, 1990, ch. 405, § 6, eff from and after July 1, 1990.

JUDICIAL DECISIONS

1. In general.
2. Miscellaneous.

1. In general.

In an action on a claim for workmen's compensation benefits, it was for the commission, based on the medical and lay testimony, to determine not only whether the bulge or herniated disc and the resultant disability arose out of and in the course of the claimant's employment, but also to determine, if allowable, when compensability should begin. Central Elec. & Mach. Co. v. Shelton, 220 So. 2d 320 (Miss. 1969).

2. Miscellaneous.

Award of disability benefits to the employee was improper because the employee's claim was barred by the two-year statute of limitations set forth in Miss. Code Ann. § 71-3-35(1); it was possible for the employer to dispute compensability yet provide medical treatment without waiving the statute of limitations. Even if it could have been inferred that the employer's intent behind payments to the employee was in lieu of compensation, those four days did not satisfy the five-day waiting period that was required in Miss. Code Ann. § 71-3-11. Lindsay Logging, Inc. v. Watson, 44 So. 3d 388 (Miss. Ct. App. 2010), writ of certiorari denied by 49 So. 3d 106, 2010 Miss. LEXIS 495 (Miss. 2010).

Even if it could have been inferred that the employer's intent behind payments to the employee was in lieu of compensation, the fact that employer paid claimant for four of his eleven total days of absence over a twenty-five month period did not satisfy the five-day waiting period that was required in Miss. Code Ann. § 71-3-11. Lindsay Logging, Inc. v. Watson, 44 So. 3d 388 (Miss. Ct. App. 2010), writ of certiorari denied by 49 So. 3d 106, 2010 Miss. LEXIS 495 (Miss. 2010).

Employer and its carrier were not equitably estopped from asserting a statute of limitations defense for a workers' compensation claim because under Miss. Code Ann. §§ 71-3-67(1) and 71-3-11, the employer was not required to file a first notice of injury in that it had no reason to conclude that the claimant suffered a compensable injury in that the claimant had attributed his back pain to a prior back injury that was not work-related. Bynum v. Anderson Tully Lumber Co., 996 So. 2d 814 (Miss. Ct. App. 2008).

RESEARCH REFERENCES

Am Jur. 82 Am. Jur. 2d, Workers' Compensation § 405.

CJS. 99 C.J.S., Workmen's Compensation §§ 561, 562, 564-566.

§ 71-3-13. Maximum and minimum recovery.

(1) Compensation for disability or in death cases shall not exceed sixty-six and two-thirds percent (66-⅔%) of the average weekly wage for the state per week, nor shall it be less than Twenty-five Dollars ($25.00) per week except in partial dependency cases and in partial disability cases.

(2) Maximum recovery: The total recovery of compensation hereunder, exclusive of medical payments under Section 71-3-15, arising from the injury to an employee or the death of an employee, or any combination of such injury or death, shall not exceed the multiple of four hundred fifty (450) weeks times sixty-six and two-thirds percent (66-⅔%) of the average weekly wage for the state.

SOURCES: Codes, 1942, § 6998-07; Laws, 1948, ch. 354, § 6b; Laws, 1950, ch. 412, § 4; Laws, 1958, ch. 454, § 2; Laws, 1960, ch. 279; Laws, 1968, ch. 559, § 4;

Laws, 1972, ch. 522, § 2; Laws, 1976, ch. 459, § 1; Laws, 1979, ch. 442, § 1; Laws, 1981, ch. 341, § 1; reenacted, Laws, 1982, ch. 473, § 7; Laws, 1984, ch. 402, § 1; Laws, 1988, ch. 446, § 2; reenacted without change, Laws, 1990, ch. 405, § 7; Laws, 1992, ch. 577, § 2, eff from and after passage (approved May 15, 1992).

Editor's Note — Laws of 1988, ch. 446, § 6, provides as follows:

"SECTION 6. This act shall take effect and be in force from and after July 1, 1988; provided, however, the increase in benefits allowed under this act shall apply only to claims arising on or after July 1, 1988".

Cross References — Compensation for disability, see § 71-3-17.

Determination of wages, see § 71-3-31.

JUDICIAL DECISIONS

1. In general.
2. Partial disability cases.
3. Partial dependency cases.

1. In general.

The increased benefits allowed under the 1972 amendment to this section apply only to claims arising on or after July 1, 1972, and the circuit court erred in ordering payments of $56 per week to a claimant whose injury occurred prior to that date. Stuart Mfg. Co. v. Walker, 313 So. 2d 574 (Miss. 1975).

The interpretation to be placed on the language used in this section [Code 1942, § 6998-07] is that the total amount of weekly benefits to be paid by the employer in totally dependent cases, regardless of the number of dependents, shall not be less than $10 per week. Truck Trailer Sales & Serv. Co. v. Moore, 244 Miss. 317, 141 So. 2d 541 (1962).

Where a claimant began work 4 weeks preceding the date of injury and had worked 3 days the 1st week, 2 days during the 2d week, and 3 days during each of the next 2 weeks and her total earnings amounted to $51.28, she should have been awarded compensation in the amount of $10 per week rather than an award based on an average weekly wage of $25. Pepper v. Barrett, 225 Miss. 30, 82 So. 2d 580 (1955).

2. Partial disability cases.

The minimum payment of $25 per week provided in § 71-3-13 may not be reduced by the apportionment provided in § 71-3-7 except in partial dependency cases. Thus, a partially disabled employee was entitled to weekly payments of $25 rather than $12.50, even though her permanent partial disability was due 50 percent to her work-related injury and 50 percent to a preexisting condition. Cross Mfg., Inc. v. Lowery, 394 So. 2d 887 (Miss. 1981).

This section [Code 1942, § 6998-07] applies to an award for permanent partial disability. Wiygul Motor Co. v. Pate, 237 Miss. 325, 115 So. 2d 51 (1959).

Order of attorney-referee and the commission finding that claimant's loss of wage earning capacity was $6 per week, and awarding claimant compensation for permanent partial disability at rate of $4 per week, was reversed and judgment entered in supreme court amending the findings so as to show the claimant's loss of earning capacity at $17.50 per week, and awarding compensation to the claimant for permanent partial disability at the rate of 66 and ⅔ per cent of that amount. Hale v. General Box Mfg. Co., 235 Miss. 301, 108 So. 2d 844 (1959).

3. Partial dependency cases.

The 1950 amendment to this section [Code 1942, § 6998-07] providing for a minimum weekly compensation of $10.00 "except in partial dependency cases," permits the payment to a dependent under Code 1942, § 6998-13 of an amount less than the minimum, (a) where his statutory compensation is less than that amount, and (b) where such dependent is partially and not wholly dependent on the deceased employee; if he is wholly dependent, then the $10.00 applies. Bradshaw v. Rudder, 227 Miss. 143, 85 So. 2d 778 (1956).

RESEARCH REFERENCES

ALR. Workers' compensation: bonus as factor in determining amount of compensation. 84 A.L.R.4th 1055.

Am Jur. 82 Am. Jur. 2d, Workers' Compensation §§ 338, 384.

7 Am. Jur. Proof of Facts 3d 143, Workers' Compensation for Attendant Care Services by Family Members.

CJS. 99 C.J.S., Workers' Compensation §§ 561, 562, 564-566, 598, 601.

§ 71-3-15. Medical services and supplies.

(1) The employer shall furnish such medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, artificial members, and other apparatus for such period as the nature of the injury or the process of recovery may require. The injured employee shall have the right to accept the services furnished by the employer or, in his discretion, to select one (1) competent physician of his choosing and such other specialists to whom he is referred by his chosen physician to administer medical treatment. Referrals by the chosen physician shall be limited to one (1) physician within a specialty or subspecialty area. Except in an emergency requiring immediate medical attention, any additional selection of physicians by the injured employee or further referrals must be approved by the employer, if self-insured, or the carrier prior to obtaining the services of the physician at the expense of the employer or carrier. If denied, the injured employee may apply to the commission for approval of the additional selection or referral, and if the commission determines that such request is reasonable, the employee may be authorized to obtain such treatment at the expense of the employer or carrier. Approval by the employer or carrier does not require approval by the commission. A physician to whom the employee is referred by his employer shall not constitute the employee's selection, unless the employee, in writing, accepts the employer's referral as his own selection. Should the employer desire, he may have the employee examined by a physician other than of the employee's choosing for the purpose of evaluating temporary or permanent disability or medical treatment being rendered under such reasonable terms and conditions as may be prescribed by the commission. If at any time during such period the employee unreasonably refuses to submit to medical or surgical treatment, the commission shall, by order, suspend the payment of further compensation during such time as such refusal continues, and no compensation shall be paid at any time during the period of such suspension; provided, that no claim for medical or surgical treatment shall be valid and enforceable, as against such employer, unless within twenty (20) days following the first treatment the physician or provider giving such treatment shall furnish to the employer, if self-insured, or its carrier, a preliminary report of such injury and treatment, on a form or in a format approved by the commission. Subsequent reports of such injury and treatment must be submitted at least every thirty (30) days thereafter until such time as a final report shall have been made. Reports which are required to be filed hereunder shall be furnished by the medical provider to the employer or carrier, and it shall be the responsibility of the employer or carrier receiving such reports to

promptly furnish copies to the commission. The commission may, in its discretion, excuse the failure to furnish such reports within the time prescribed herein if it finds good cause to do so, and may, upon request of any party in interest, order or direct the employer or carrier to pay the reasonable value of medical services rendered to the employee.

(2) Whenever in the opinion of the commission a physician has not correctly estimated the degree of permanent disability or the extent of the temporary disability of an injured employee, the commission shall have the power to cause such employee to be examined by a physician selected by the commission, and to obtain from such physician a report containing his estimate of such disabilities. The commission shall have the power in its discretion to charge the cost of such examination to the employer, if he is a self-insurer, or to the insurance company which is carrying the risk.

(3) In carrying out this section, the commission shall establish an appropriate medical provider fee schedule, medical cost containment system and utilization review which incorporates one or more medical review panels to determine the reasonableness of charges and the necessity for the services, and limitations on fees to be charged by medical providers for testimony and copying or completion of records and reports and other provisions which, at the discretion of the commission, are necessary to encompass a complete medical cost containment program. The commission may contract with a private organization or organizations to establish and implement such a medical cost containment system and fee schedule with the cost for administering such a system to be paid out of the administrative expense fund as provided in this chapter. All fees and other charges for such treatment or service shall be limited to such charges as prevail in the same community for similar treatment and shall be subject to regulation by the commission. No medical bill shall be paid to any doctor until all forms and reports required by the commission have been filed. Any employee receiving treatment or service under the provisions of this chapter may not be held responsible for any charge for such treatment or service, and no doctor, hospital or other recognized medical provider shall attempt to bill, charge or otherwise collect from the employee any amount greater than or in excess of the amount paid by the employer, if self-insured, or its workers' compensation carrier. Any dispute over the amount charged for service rendered under the provisions of this chapter, or over the amount of reimbursement for services rendered under the provisions of this chapter, shall be limited to and resolved between the provider and the employer or carrier in accordance with the fee dispute resolution procedures adopted by the commission.

(4) The liability of an employer for medical treatment as herein provided shall not be affected by the fact that his employee was injured through the fault or negligence of a third party, not in the same employ, provided the injured employee was engaged in the scope of his employment when injured. The employer shall, however, have a cause of action against such third party to recover any amounts paid by him for such medical treatment.

(5) An injured worker who believes that his best interest has been prejudiced by the findings of the physician designated by the employer or

carrier shall have the privilege of a medical examination by a physician of his own choosing, at the expense of the carrier or employer. Such examination may be had at any time after injury and prior to the closing of the case, provided that the charge shall not exceed One Hundred Dollars ($100.00) and shall be paid by the carrier or employer where the previous medical findings are upset, but paid by the employee if previous medical findings are confirmed.

(6) Medical and surgical treatment as provided in this section shall not be deemed to be privileged insofar as carrying out the provisions of this chapter is concerned. All findings pertaining to a second opinion medical examination, at the instance of the employer shall be reported as herein required within fourteen (14) days of the examination, except that copies thereof shall also be furnished by the employer or carrier to the employee. All findings pertaining to an independent medical examination by order of the commission shall be reported as provided in the order for such examination.

(7) Any medical benefits paid by reason of any accident or health insurance policy or plan paid for by the employer, which were for expenses of medical treatment under this section, are, upon notice to the carrier prior to payment by it, subject to subrogation in favor of the accident or health insurance company to the extent of its payment for medical treatment under this section. Reimbursement to the accident or health insurance company by the carrier or employer, to the extent of such reimbursement, shall constitute payment by the employer or carrier of medical expenses under this section. Under no circumstances, shall any subrogation be had by any insurance company against any compensation benefits paid under this chapter.

SOURCES: Codes, 1942, § 6998-08; Laws, 1948, ch. 354, § 7; Laws, 1950, ch. 412, § 5; reenacted and amended, Laws, 1982, ch. 473, § 8; reenacted without change, Laws, 1990, ch. 405, § 8; Laws, 1992, ch. 577, § 3; Laws, 1995, ch. 582, § 2, eff from and after July 1, 1995.

Cross References — Exclusion of medical payments under this section from computation of maximum recovery under this chapter, see § 71-3-13.

Study by Medical Advisory Board of possible use of medical fee schedule, see § 71-3-115.

JUDICIAL DECISIONS

1. In general.
2. Liability for services.
3. —Employer required to provide.
4. —Employer not required to provide.
5. —Failure to supply.
6. —Failure to request.
7. Refusal to submit to examination or treatment.
8. Patient-physician communication privilege.
9. Limitation periods.
10. Choice of physicians.
11. Medical records.

1. In general.

Denial of workers' compensation benefits to the employee was proper because, as a result of discrepancies in a doctor's testimony and records in the case, the doctor's testimony and opinions were not credible and were unusable in the determination of disability; the Workers' Compensation Commission was not required to always comply with a treating physician's opinion. Richardson v. Johnson Elec. Auto., Inc., 962 So. 2d 146 (Miss. Ct. App. 2007).

Statute required that disputes over what was reasonable and necessary had to be resolved through the Workers' Compensation Commission's procedures. Walls v. Franklin Corp., 797 So. 2d 973 (Miss. 2001).

The claimant did not follow the requirements of this section in obtaining treatment where he was not referred to the treating physician by his designated physician. Fleming Enters., Inc. v. Henderson, 741 So. 2d 309 (Miss. Ct. App. 1999).

Albeit without express statutory provision, Mississippi law undoubtedly affords medical providers means through Mississippi Workers' Compensation Commission to recoup fees for treating work-related injuries of employees entitled to workers' compensation insurance benefits. McFadden v. Liberty Mut. Ins. Co., 803 F. Supp. 1178 (N.D. Miss. 1992), aff'd, 988 F.2d 1210 (5th Cir. 1993).

Workers' compensation carrier has right to de-authorize chiropractic treatments previously approved by it or by its insured, employer, if it provides for alternative treatment. Norville v. Commercial Union Ins. Co., 690 F. Supp. 558 (S.D. Miss. 1988), aff'd, 866 F.2d 1419 (5th Cir. 1989).

An emergency, in contemplation of the provisions of this section [Code 1942, § 6998-08], must allow of no reasonable alternative consistent with the preservation of life or irreparable injury from delay. Ingalls Shipbuilding Corp. v. Holcomb, 217 So. 2d 18 (Miss. 1968).

There can be no apportionment of medical benefits under this section [Code 1942, § 6998-08]. Arender v. National Sales, Inc., 193 So. 2d 579 (Miss. 1966), motion granted, 195 So. 2d 90 (Miss. 1967).

Doctor's failure to comply with statute precludes allowance for medical benefits. Crow v. Guy Scoggins Gen. Oilfield Contracting Co., 248 Miss. 1, 158 So. 2d 1 (1963).

Nonpayment of medical expenses does not subject the employer to the twenty per cent penalty prescribed by Code 1942, § 6998-19(f) for nonpayment of any installment of an award; but statutory damages under Code 1942, § 1971 may be allowed. J.H. Moon & Sons v. Hood, 244 Miss. 564, 144 So. 2d 782 (1962).

The right to medical expenses continues after expiration of the maximum benefit period or the payment of the maximum amounts of weekly benefits. J.H. Moon & Sons v. Hood, 244 Miss. 564, 144 So. 2d 782 (1962).

Payments for medical expenses under this section [Code 1942, § 6998-08] are not included in the maximum sums established for specific types of disabilities or death. Graeber Bros. v. Taylor, 237 Miss. 691, 115 So. 2d 735 (1959), error overruled 237 Miss. 691, 117 So. 2d 469.

Where medical findings of a doctor were upset by the testimony of a second doctor, in a workmen's compensation proceeding, the medical bill of the second doctor should have been allowed. Webster Constr. Co. v. Bates, 227 Miss. 207, 85 So. 2d 795 (1956).

2. Liability for services.

In a workers' compensation case, the employer was not responsible for payment for any medical services or supplies rendered to the claimant by referral doctors because they were not authorized to treat the claimant by the employer; thus, the administrative law judge properly denied payment for the claimant's medical services rendered by those two doctors. Twine v. City of Gulfport, 833 So. 2d 596 (Miss. Ct. App. 2002).

Employer was not liable for medical services provided to a workers' compensation claimant when those services were provided after the claimant went to the provider without the employer's authorization, even though the employer had previously authorized treatment by the same provider, which the claimant initially declined, because too much time had intervened between the authorized referral and the actual treatment for the reasons for the initial referral to be applicable. Wesson v. Fred's Inc., 811 So. 2d 464 (Miss. Ct. App. 2002).

A specially equipped van qualified as an "other apparatus" under subsection (1) where the claimant was rendered a quadriplegic in a work related accident, had an extremely difficult time riding or getting in and out of a car, had received rehabilitation training as a handicapped driver and had been certified to drive an automobile, but had an unreliable car with about

180,000 miles and had to rent a car or rely on a courier to get to his doctor's appointments. Georgia-Pacific Corp. v. James, 733 So. 2d 875 (Miss. Ct. App. 1999).

Chiropractic services as such are not excluded under the Mississippi Workers' Compensation Act. If the treatment was necessary and the charges were reasonable, a claimant cannot be denied medical benefits solely because the service was rendered by a licensed chiropractor. White v. Hattiesburg Cable Co., 590 So. 2d 867 (Miss. 1991).

Worker's compensation claimant is entitled to award of medical expenses to extent that expenses have not been paid or payment procured by employer. South Cent. Bell Tel. Co. v. Aden, 474 So. 2d 584 (Miss. 1985).

In a workman's compensation action the claimant made the requisite request from defendants for nursing services where there was uncontradicted evidence that claimant's injuries and the services performed by his wife were described to a representative of his employer's workman's compensation carrier and that claimant also requested payments for services his wife performed in connection with his accident. City of Kosciusko v. Graham, 419 So. 2d 1005 (Miss. 1982).

In a damage action commenced by an employee, alleging that he had lost the use of his thumb because his employer had been negligent in placing an unqualified person in the first aid station and in not providing proper medical care and attention after he cut his thumb while working in the scope of his employment, the trial judge properly sustained the employer's affirmative defense that workmen's compensation was the employee's sole and exclusive remedy; the dual capacity doctrine would not be applied, absent legislative enactment. Trotter v. Litton Sys., 370 So. 2d 244 (Miss. 1979).

Where compensable injury is aggravated by treatment, without the injured person's fault, resulting injury or death is also compensable. McBride v. Wetmore & Parman, Inc., 241 Miss. 743, 133 So. 2d 261 (1961).

3. —Employer required to provide.

Finding in favor of the employee in his workers' compensation action was proper pursuant to Miss. Code Ann. §§ 71-3-17(c)(25), 71-3-37(5), and 71-3-15, where the employee offered medical proof the injury manifested its symptoms in an area other than the initial impact; further, the computation of disability benefits was one cent less than the amount awarded by the administrative judge and the appellate court did not find that a one-cent rounding error difference was arbitrary or capricious, Miss. Code Ann. § 71-3-17(25). Cives Steel Co. Port of Rosedale v. Williams, 905 So. 2d 661 (Miss. Ct. App. 2004).

Employer was bound to provide, pursuant to Miss. Code Ann. § 71-3-15, reasonable medical care for the employee's recovery because there was sufficient evidence to support a finding that the employee had suffered both a lower back and a cervical injury while employed, and both injuries were compensable. Howard Indus. v. Robinson, 846 So. 2d 245 (Miss. Ct. App. 2002).

Injured employee's wife was entitled to payments for the nursing services she provided for the employee, as the evidence showed that her services, such as bathing the employee, assisting in exercises, and dispensing medication, were a necessary part of the employee's life. Port Gibson Oil Works v. Estate of Hughes, 823 So. 2d 613 (Miss. Ct. App. 2002).

Employer was obligated under Workers' Compensation Law to allow claimant to have laprascopic back surgery, where his primary treating physician recommended such surgery, but second physician who saw claimant on limited basis stated that there was only a 50% chance that surgery would allow claimant to return to heavy work, and third physician who saw claimant only once stated that surgery was unnecessary or would not be beneficial to claimant's recovery. Spann v. Wal-Mart Stores, Inc., 700 So. 2d 308 (Miss. 1997).

Nursing care provided by relative to injured workers' compensation claimant is compensable as medical benefit. Mississippi Transp. Comm'n v. Dewease, 691 So. 2d 1007 (Miss. 1997).

Workers' compensation claimant's failure to present evidence regarding extent of care required before claimant was admitted to nursing home necessitated remand to determine how many hours a day of actual nursing care was needed, nature of services wife performed, and wage rate during relevant period, for purposes of calculating reimbursement for nursing services provided to claimant by his wife. Mississippi Transp. Comm'n v. Dewease, 691 So. 2d 1007 (Miss. 1997).

If there is evidence that wheelchair van is reasonably necessary for workers' compensation claimant, it may qualify as "other apparatus" for which medical benefits shall be paid. Mississippi Transp. Comm'n v. Dewease, 691 So. 2d 1007 (Miss. 1997).

Workers' compensation claimant could not recover cost of specially-equipped wheelchair vans, absent evidence that vans were necessary either while claimant lived at home or after he moved to nursing home. Mississippi Transp. Comm'n v. Dewease, 691 So. 2d 1007 (Miss. 1997).

Workers' compensation claimant's treating physician lacks standing to bring independent tort claim against compensation carrier for bad-faith refusal to pay, inasmuch as such physician is merely unintended third-party creditor beneficiary of insurance contract, and his status thus is merely derivative. McFadden v. Liberty Mut. Ins. Co., 803 F. Supp. 1178 (N.D. Miss. 1992), aff'd, 988 F.2d 1210 (5th Cir. 1993).

Under § 71-3-15, an employer was required to pay an injured employee's medical expenses, even though they already had been paid under a health and accident insurance policy bought and paid for by the employee/claimant, which was not intended to be in lieu of compensation under the Workmen's Compensation Act, and which was a contract between the claimant and her insurer to which her employer had no privity and from which he could not be allowed to derive a benefit. Bowen v. Magic Mart of Corinth, 441 So. 2d 548 (Miss. 1983).

The circuit court properly ordered that claimant's wife be paid at the rate of $2.25 an hour for four hours nursing daily from the time of her request for such payment until the time of award where evidence supported the findings as to hours of nursing needed and the proper rate of pay; with respect to the claim for a similar recovery for the period after injury and prior to the request for payment, the cause was remanded to the workmen's compensation commission for a hearing in which, inter alia, the employer and carrier would be allowed to defend and in which there could be evidence as to how many hours per day of nursing services would have been required. Graham v. City of Kosciusko, 339 So. 2d 60 (Miss. 1976).

Where the employees of two corporations were working together under the supervision of an employee of the first, and where the employee of the second corporation, after sustaining a minor injury was en route to a doctor, being driven by an employee of the first corporation under the direction of the supervisor, and en route was involved in an accident, the corporations were not exonerated from liability on the ground that there was no obligation to furnish medical service, since Code 1942, § 6998-08 places a duty upon an employer to furnish medical services to an injured employee, and if necessary to transport the employee to a doctor. Glenn's All Am. Sportswear, Inc. v. Thompson, 257 So. 2d 866 (Miss. 1972).

Where an injured employee was told by her employer to go to whatever doctor she had to go to and do whatever she had to do to get better, there was an uncontradicted and express authorization on the part of the employer for the employee to select a doctor of her choice, and where the employee went to her family physician who referred her to an orthopedic surgeon, the statutory limitation on the expenses to be borne by the employer where the employee selects his own physician did not apply, and the employer was liable for all of the medical bills including the expenses of two additional doctors selected by the employee. American Partition Co. v. Thornton, 231 So. 2d 190 (Miss. 1970).

Where the proof was that plaintiff's gastric ulcer was precipitated into activity by a back injury he sustained on the job, and the evidence conclusively showed that treatment of the ulcer was required for the process of recovery, the allowance of the medical expenses for its treatment was proper. Frazier v. State, 190 So. 2d 863 (Miss. 1966).

Where medical testimony indicated that the use of certain drugs by a claimant who had suffered a mild myocardial infarction were necessary in order to prevent a second heart attack, the commission's order requiring the employer and insurer to bear the cost of furnishing the drugs was affirmed. Southern Auto Co. v. Bergin, 187 So. 2d 879 (Miss. 1966).

One into whose eye a spectacle lens has been shattered by a flying object is entitled to immediate examination by a doctor, and to replacement of the broken lens. Teague v. Graning Hardwood Mfg. Co., 238 Miss. 48, 117 So. 2d 342 (1960).

Where reputable doctors determined that the process of claimant's recovery from an injury resulting from an accident arising within the course of his employment required the extraction of his lower teeth, the employer was properly required to provide for the claimant a lower set of false teeth to replace those extracted. B.C. Rogers & Sons v. Reeves, 232 Miss. 309, 98 So. 2d 875 (1957).

4. —Employer not required to provide.

Referrals to additional neurosurgeons required prior approval from either the employer or the Workers' Compensation Commission under Miss. Code Ann. § 71-3-15(1). Because the employee did not show any evidence that she was denied approval or sought assistance from the Commission, the employer was not responsible for the medical expenses of two doctors. Wal-Mart Stores, Inc. v. Patrick, 5 So. 3d 1119 (Miss. Ct. App. 2008), writ of certiorari denied by 11 So. 3d 1250, 2009 Miss. LEXIS 182 (Miss. 2009).

Appellate court held an employer was not obligated to pay for a claimant's continuing treatment as it had been determined that the claimant had reached maximum medical improvement with regard to his closed head injury, and his continued treatment was necessary due to a preexisting bipolar disorder. Havard v. Titan Tire Corp., 919 So. 2d 995 (Miss. Ct. App. 2005).

Physicians' testimony that smoking would not have caused the fibrotic scarring to the lungs that the employee suffered, was not wholly conclusive, but was supported by substantial evidence, as was evidence of the employee's decreased earning capacity, because the employee required the assistance of a co-employee for more strenuous tasks; thus, the employee's award of benefits for permanent disability and loss of wage-earning capacity was proper. Cooper Tire & Rubber Co. v. Harris, 837 So. 2d 789 (Miss. Ct. App. 2003).

Where injured employee failed to get his employer's approval to get subsequent treatment from other doctors, after the doctor provided by his employer found the employee had reached maximum medical recovery, and the first doctor the employee went to agreed the employee had reached maximum medical recovery, there was no error in finding the subsequent treatment was not reasonable. Congleton v. Shellfish Culture, Inc., 807 So. 2d 492 (Miss. Ct. App. 2002).

The employer was not required to pay for services rendered by a particular physician where (1) approximately 10 months after the claimant's injury, the physician examined him for neck pain, and (2) prior to this examination, the claimant had not complained principally of neck pain which resulted from his work injury; based on these facts as well as a comparison of the results of MRI tests, the commission properly found that the claimant did not sustain a compensable neck injury and properly denied payment of the physician's bills. Bowen v. City of Holly Springs, 755 So. 2d 1103 (Miss. Ct. App. 1999).

The Workers' Compensation Commission properly found that treatments consisting of a series of epidural blocks, trigger point injections, electrical stimulation, traction, and physical therapy were neither reasonable nor necessary where the claimant testified that she only obtained temporary benefit from the treatments and the commission was unable to find any measurable improvement as a result. Baugh v. Central Miss. Planning & Dev. Dist., 740 So. 2d 342 (Miss. Ct. App. 1999).

One whose pre-existing injury was aggravated by his employment is not entitled to the provision of surgical treatment where other treatment has restored him to his pre-accident condition. Lloyd Ford Co. v. Price, 240 Miss. 250, 126 So. 2d 529 (1961).

5. —Failure to supply.

The statute requiring the employer to furnish medical services is mandatory in form, and the employer is not relieved of his duty to furnish such medical services by the mere offer of the foreman to carry the claimant to town to see a doctor immediately after an injury and the claimant's failure to accept that offer. Pepper v. Barrett, 225 Miss. 30, 82 So. 2d 580 (1955).

Where claimant, who suffered a heart attack while working as a helper on an oil well servicing crew, went to his personal physician after the employer had failed to supply medical help, the claimant was entitled to medical benefits. Thornbrough Well Servicing Co. v. Brown, 223 Miss. 322, 78 So. 2d 159 (1955).

6. —Failure to request.

Workers' compensation claimant's obtaining of medical treatment by a doctor outside of the chain-of-referral merely because it was more convenient to his home did not constitute an emergency where there was no serious effort by the claimant to obtain approval for the medical treatment. Mosby v. Farm Fresh Catfish Co., 19 So. 3d 789 (Miss. Ct. App. 2009).

An employee who had gone to his own private family physician and had not requested that his employer send him to a company doctor after he became ill was nonetheless entitled to recover his medical expenses where the employee had not become aware of the seriousness of his disease or its relation to his employment until he had been released from the hospital and where the employee and his doctors had used reasonable care and diligence to determine the true nature of the disease. Sperry-Vickers, Inc. v. Honea, 394 So. 2d 1380 (Miss. 1981).

In a proceeding by a paraplegic for compensation for the assistance rendered by his wife over and above that called for by her ordinary duties (§ 71-3-1 et seq), the claimant's compliance with the request requirement of this section was evidenced by the insurer's letter denying the requested compensation and by the administrative law judge's responses to interrogatories concerning the paraplegic's preservation of his rights at the time of the hearing on a petition requesting modification of his home. Sanders v. State, 379 So. 2d 538 (Miss. 1980).

The refusal of a claimant suffering from a ruptured disc in the lower part of his spine to undergo an operation for the condition on the ground that he was afraid of the operation was not unreasonable. Triangle Distribs. v. Russell, 268 So. 2d 911 (Miss. 1972).

When an employer furnished medical treatment for a claimant's injury, but the claimant became dissatisfied with that treatment and consulted a doctor of his own choosing without advising his employer of his decision to do so, and the claimant made no demand upon the employer to provide for an operation found to be necessary by the new physician, the employer, although liable for the cost of the claimant's examination by the new physician not to exceed $100, was not liable for the cost of the operation. Williamson v. Delta Millworks, Inc., 262 So. 2d 183 (Miss. 1972).

A claimant, allegedly injured on the job two weeks previously, who returned to his home in another town while on his way to work, from a desire to have his family physician attend him, rather than because of an emergency, could not recover all of his subsequent medical expenses from his employer, in the absence of evidence that the employer knew of claimant's actual condition and therefore had an opportunity to provide necessary treatment. Ingalls Shipbuilding Corp. v. Holcomb, 217 So. 2d 18 (Miss. 1968).

This section [Code 1942, § 6998-08] limits the liability of the employer for the bills of physicians called by the injured employee without having requested further service from the employer. Smith v. Crown Rigs, Inc., 245 Miss. 311, 148 So. 2d 195 (1963).

Where neither employee nor employer was aware of seriousness of employee's injuries, and employee made no request that employer furnish medical services, but undertook to provide medical help for himself, an award might not thereafter be made against employer for accrued medical and hospital bills. Ingalls Shipbuilding Corp. v. Byrd, 215 Miss. 234, 60 So. 2d 645 (1952).

7. Refusal to submit to examination or treatment.

Substantial evidence supported the Workers' Compensation Commission's decision finding that the claimant was entitled to permanent partial disability benefits commensurate with an impairment rating of only 10 percent where there was testimony that the claimant's failure to follow through with her physical therapy may well have been the reason for her loss of motion range. Posey v. United Methodist Senior Servs., 773 So. 2d 976 (Miss. Ct. App. 2000).

Workmen's Compensation Commission did not err in requiring claimant to submit to medical examination after, and not prior to, making the award in favor of the claimant. Roberts v. Junior Food Mart, 308 So. 2d 232 (Miss. 1975).

The commission's authority to order a claimant to submit to a medical examination by a physician of its choice is clear. Everitt v. Lovitt, 192 So. 2d 422 (Miss. 1966).

Whether an injured employee's refusal to submit to proper medical treatment is unreasonable is ordinarily a question of fact for the determination of the Workmen's Compensation Commission. Walker v. International Paper Co., 230 Miss. 95, 92 So. 2d 445 (1957).

The burden of proving that an operation tendered to an insured workman is simple, safe, and will probably affect a cure or substantial improvement for the employee was upon the employer. Walker v. International Paper Co., 230 Miss. 95, 92 So. 2d 445 (1957).

While an injured workman will be denied compensation for incapacity which may be removed or modified by an operation of a simple character, not involving serious suffering or danger, where the operation is of a serious character, involves serious suffering or danger, or is doubtful of success, an injured employee's refusal to submit to such an operation is not unreasonable, and the right to compensation is not precluded by such refusal. Walker v. International Paper Co., 230 Miss. 95, 92 So. 2d 445 (1957).

Since the workmen's compensation commission's order, holding that a claimant's refusal to submit to surgery for a herniated disc was not unreasonable and was supported by substantial evidence, the commission's order awarding claimant compensation was reinstated and affirmed. Walker v. International Paper Co., 230 Miss. 95, 92 So. 2d 445 (1957).

8. Patient-physician communication privilege.

Code 1942, § 6998-08 does not prohibit the invocation of the patient-physician communication privilege in proceedings before the Mississippi workmen's compensation commission. Cooper's, Inc. v. Long, 224 So. 2d 866 (Miss. 1969).

Although the patient-physician communication privilege rule of evidence is not abolished by the Workmen's Compensation Law except insofar as it is specifically provided under Code 1942, § 6998-08, there is, however, under Code 1942, § 6998-28 a grant of authority to the workmen's compensation commission to relax, in its discretion, the traditional common law and statutory rules of evidence in order to obtain a full development of the facts concerning each claim; and, in the instant case the attorney referee did not abuse his discretion in refusing to relax the patient-physician communication privilege in order to let in testimony concerning the claimant's alleged pre-existing injury. Cooper's, Inc. v. Long, 224 So. 2d 866 (Miss. 1969).

9. Limitation periods.

A physician's failure to file his medical reports with either the employer/carrier or the Mississippi Workers' Compensation Commission did not bar the claimant from asserting that his 1991 leg injury was the cause of his subsequent venous condition; the filing deadline on which the employer/carrier centered its argument was in no sense jurisdictional and the statute goes to compensation of work related injuries and not to establishing the causation. Siemens Energy & Automation, Inc. v. Pickens, 732 So. 2d 276 (Miss. Ct. App. 1999).

An application for additional medical benefits by claimant who had refused to sign the final report and settlement receipt was timely where filed within less than one year after the claimant had received notice that the employer had filed with the workmen's compensation commission a final report and settlement receipt, properly filled out. International

Paper Co. v. Evans, 244 Miss. 49, 140 So. 2d 271 (1962).

The limitation period for making application for an adjudication of claimant's right to receive medical attention after payment of maximum benefits, does not begin to run while the claimant is receiving such attention. Gibbs v. Bass, 237 Miss. 823, 116 So. 2d 542 (1959).

Payment of medical expense is payment of compensation tolling the statute of limitations. Graeber Bros. v. Taylor, 237 Miss. 691, 115 So. 2d 735 (1959), error overruled 237 Miss. 691, 117 So. 2d 469.

The Workmen's Compensation Law evidences the legislative intent to put the same period of limitations on the payment of medical benefits as has been put on the payment of compensation. Trehern v. Grafe Auto Co., 232 Miss. 854, 100 So. 2d 786 (1958).

Where a claimant, who had been paid some medical expenses and compensation benefits, together with the carrier, executed a form under which the claim was closed, a claim for additional medical benefits filed nearly four years later was barred by the statute of limitations. Trehern v. Grafe Auto Co., 232 Miss. 854, 100 So. 2d 786 (1958).

10. Choice of physicians.

Lower court erred in overruling an order from the Mississippi Workers' Compensation Commission that an injured employee did not need surgery because the Commission based its findings on the opinions of two competent doctors and on the findings of medical tests and procedures. Lower court's application of caselaw was contrary to Miss. Code Ann. § 71-3-15(1), which allowed the employer to have the employee examined by a physician other than one of the employee's choosing. Hardaway Co. v. Bradley, 887 So. 2d 793 (Miss. 2004).

Corporation's argument that insurance carrier and its employee, the adjuster, could not choose which home nursing services provider to pay for was without merit; the language of Miss. Code Ann. § 71-3-15 did not provide that the injured employee had the right to choose his nurse or therapist, the record did not reveal that the doctor remained to administer care to the patient, he merely referred the injured employee to a home health care provider. PDN, Inc. v. Loring, 843 So. 2d 685 (Miss. 2003).

Under the pre-1992 version of the statute, which permitted a claimant "to select a competent physician of his choosing to administer medical treatment," an initial physician such as the claimant's family doctor could make a preliminary diagnosis and then refer the claimant to someone more expert regarding that ailment; there was no legislative limit on the number of referrals that successive doctors could make as proper care for a claimant. Dulaney v. National Pizza Co., 733 So. 2d 301 (Miss. Ct. App. 1998).

Once a claimant has fully abandoned an employer's doctors, the claimant may again exercise discretion to see a personal choice physician. Dulaney v. National Pizza Co., 733 So. 2d 301 (Miss. Ct. App. 1998).

A claimant may change her choice between employer-provided and personally-selected physicians, but at all times a choice has to be made. Dulaney v. National Pizza Co., 733 So. 2d 301 (Miss. Ct. App. 1998).

11. Medical records.

Subsection (6) was interpreted as opening up for consideration by the Workers' Compensation Commission all medical records generated as a part of the claimant's treatment for the injuries that formed the basis for his claim; this interpretation was neutral and not prejudicial to either side in a contested claim since it was often the case that the patient history would reflect the claimant's contention that the injury occurred on the job, rather than an assertion to the contrary, and that contention would be a proper factor in the commission's inquiry. Nosser v. First Am. Credit Corp., 814 So. 2d 178 (Miss. Ct. App. 2002).

RESEARCH REFERENCES

ALR. Insured's receipt of or right to workmen's compensation benefits as affecting recovery under accident, hospital, or medical expense policy. 40 A.L.R.3d 1012.

Modern status of effect of state workmen's compensation act on right of third-person tortfeasor to contribution or indemnity from employer of injured or killed workman. 100 A.L.R.3d 350.

Workers' compensation: recovery for home service provided by spouse. 67 A.L.R.4th 765.

Workers' compensation: reasonableness of employee's refusal of medical services tendered by employer. 72 A.L.R.4th 905.

"Dual Capacity Doctrine" as basis for employee's recovery for medical malpractice from company medical personnel. 73 A.L.R.4th 115.

Workers' compensation: third-party tort liability of corporate officer to injured workers. 76 A.L.R.4th 365.

Workers' compensation: compensability of injuries incurred traveling to or from medical treatment of earlier compensable injury. 83 A.L.R.4th 110.

Workers' compensation as covering cost of penile or similar implants related to sexual or reproductive activity. 89 A.L.R.4th 1057.

Employee's reimbursement for travel expenses incurred in obtaining treatment or work-related injury. 36 A.L.R.5th 225.

Compensability of specially equipped van or vehicle under workers' compensation statutes. 63 A.L.R.5th 163.

Am Jur. 82 Am. Jur. 2d, Workers' Compensation §§ 392 et seq.

21 Am. Jur. Pl & Pr Forms (Rev), Workmen's Compensation, Form 172, 173.

25 Am. Jur. Pl & Pr Forms (Rev), Workmen's Compensation, Forms 171-173.

47 Am. Jur. Proof of Facts 2d 525, Medicolegal Malpractice: Wrongful Claim Review by Physician.

49 Am. Jur. Proof of Facts 2d 331, Medicolegal Malpractice: Wrongful Medical Evaluation.

7 Am. Jur. Proof of Facts 3d 143, Workers' Compensation for Attendant Care Services by Family Members.

8 Am. Jur. Proof of Facts 3d 145, Use of CAT Scans in Litigation.

CJS. 99 C.J.S., Workers' Compensation §§ 485, 486, 500 et seq.

Law Reviews. 1979 Mississippi Supreme Court Review: Administrative Law. 50 Miss. L. J. 699, December 1979.

§ 71-3-17. Compensation for disability.

Compensation for disability shall be paid to the employee as follows:

(a) Permanent total disability: In case of total disability adjudged to be permanent, sixty-six and two-thirds percent (66-⅔%) of the average weekly wages of the injured employee, subject to the maximum limitations as to weekly benefits as set up in this chapter, shall be paid to the employee not to exceed four hundred fifty (450) weeks or an amount greater than the multiple of four hundred fifty (450) weeks times sixty-six and two-thirds percent (66-⅔%) of the average weekly wage for the state. Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two (2) thereof shall constitute permanent total disability. In all other cases permanent total disability shall be determined in accordance with the facts.

(b) Temporary total disability: In case of disability, total in character but temporary in quality, sixty-six and two-thirds percent (66-⅔%) of the average weekly wages of the injured employee, subject to the maximum limitations as to weekly benefits as set up in this chapter, shall be paid to the employee during the continuance of such disability not to exceed four hundred fifty (450) weeks or an amount greater than the multiple of four hundred fifty (450) weeks times sixty-six and two-thirds percent (66-⅔%) of the average weekly wage for the state. Provided, however, if there arises a conflict in medical opinions of whether or not the claimant has reached maximum medical recovery and the claimant's benefits have terminated by the carrier, then the claimant may demand an immediate hearing before the commissioner upon five (5) days' notice to the carrier for a determination by the commission of whether or not in fact the claimant has reached maximum recovery.

(c) Permanent partial disability: In case of disability partial in character but permanent in quality, the compensation shall be sixty-six and two-thirds percent (66-⅔%) of the average weekly wages of the injured employee, subject to the maximum limitations as to weekly benefits as set up in this chapter, which shall be paid following compensation for temporary total disability paid in accordance with subsection (b) of this section, and shall be paid to the employee as follows:

Member Lost	Number Weeks Compensation
(1) Arm	200
(2) Leg	175
(3) Hand	150
(4) Foot	125
(5) Eye	100
(6) Thumb	60
(7) First finger	35
(8) Great toe	30
(9) Second finger	30
(10) Third finger	20
(11) Toe other than great toe	10
(12) Fourth finger	15
(13) Testicle, one	50
(14) Testicle, both	150
(15) Breast, female, one	50
(16) Breast, female, both	150

(17) Loss of hearing: Compensation for loss of hearing of one (1) ear, forty (40) weeks. Compensation for loss of hearing of both ears, one hundred fifty (150) weeks.

(18) Phalanges: Compensation for loss of more than one (1) phalange of a digit shall be the same as for loss of the entire digit. Compensation for loss of the first phalange shall be one-half (½) of the compensation for loss of the entire digit.

(19) Amputated arm or leg: Compensation for an arm or leg, if amputated at or above wrist or ankle, shall be for the loss of the arm or leg.

(20) Binocular vision or percent of vision: Compensation for loss of binocular vision or for eighty percent (80%) or more of the vision of an eye shall be the same as for loss of the eye.

(21) Two (2) or more digits: Compensation for loss of two (2) or more digits, or one (1) or more phalanges of two (2) or more digits, of a hand or

foot may be proportioned to the loss of the use of the hand or foot occasioned thereby, but shall not exceed the compensation for loss of a hand or foot.

(22) Total loss of use: Compensation for permanent total loss of use of a member shall be the same as for loss of the member.

(23) Partial loss or partial loss of use: Compensation for permanent partial loss or loss of use of a member may be for proportionate loss or loss of use of the member.

(24) Disfigurement: The commission, in its discretion, is authorized to award proper and equitable compensation for serious facial or head disfigurements not to exceed Two Thousand Dollars ($2,000.00). No such award shall be made until a lapse of one (1) year from the date of the injury resulting in such disfigurement.

(25) Other cases: In all other cases in this class of disability, the compensation shall be sixty-six and two-thirds percent (66-⅔%) of the difference between his average weekly wages, subject to the maximum limitations as to weekly benefits as set up in this chapter, and his wage-earning capacity thereafter in the same employment or otherwise, payable during the continuance of such partial disability, but subject to reconsideration of the degree of such impairment by the commission on its own motion or upon application of any party in interest. Such payments shall in no case be made for a longer period than four hundred fifty (450) weeks.

(26) In any case in which there shall be a loss of, or loss of use of, more than one (1) member or parts of more than one (1) member set forth in paragraphs (1) through (23) of this subsection, not amounting to permanent total disability, the award of compensation shall be for the loss of, or loss of use of, each such member or parts thereof, which awards shall run consecutively, except that where the injury affects only two (2) or more digits of the same hand or foot, paragraph (21) of this subsection shall apply.

SOURCES: Codes, 1942, § 6998-09; Laws, 1948, ch. 354, § 8a-c; Laws, 1950, ch. 412, § 6; Laws, 1958, ch. 454, § 3; Laws, 1968, ch. 559, § 5; Laws, 1972, ch. 522, § 3; Laws, 1976, ch. 459, § 2; Laws, 1979, ch. 442, § 2; Laws, 1981, ch. 341, § 2; reenacted, Laws, 1982, ch. 473, § 9; Laws, 1984, ch. 402, § 2; Laws, 1988, ch. 446, § 3; reenacted without change, Laws, 1990, ch. 405, § 9, eff from and after July 1, 1990.

Editor's Note — Laws of 1988, ch. 446, § 6, provides as follows:

"SECTION 6. This act shall take effect and be in force from and after July 1, 1988; provided, however, the increase in benefits allowed under this act shall apply only to claims arising on or after July 1, 1988".

Cross References — State employee who is absent and disabled from work due to work-related injury prohibited from receiving more than 100% of his wages through the use of accrued personal and medical leave combined with certain workers' compensation benefits, see § 25-3-95.

Maximum and minimum recovery, see § 71-3-13.

Provision of medical services and supplies, see § 71-3-15.

Temporary partial disability, see § 71-3-21.

Additional compensation, see §§ 71-3-23 (hernia), 71-3-25 (death), 71-3-27 (for aliens), 71-3-71 (for injuries where third parties are liable), 71-3-107 (for minors illegally employed).

Determination of wages, see § 71-3-31.

JUDICIAL DECISIONS

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1. In general.

Where there was conflicting medical evidence regarding a claimant's lumbar condition and her need for lumbar spine injury, an appellate court could not say that the Workers' Compensation Commission's decision to deny benefits was arbitrary and capricious. Washington v. Woodland Vill. Nursing Home, 25 So. 3d 341 (Miss. Ct. App. 2009), writ of certiorari denied by 24 So. 3d 1038, 2010 Miss. LEXIS 2 (Miss. 2010).

Where an employee suffered a back injury while working, an administrative law judge's (ALJ) finding that an elective back surgery, related treatment, and psychological care were non-compensable was upheld because, inter alia, (1) the ALJ was not required to defer to "treating" or patient-selected physicians, (2) substantial evidence supported the finding that the employee did not require surgery, and (3) there was evidence that the employee had underlying psychiatric problems stemming from childhood abuse unrelated to the work injury. Manning v. Sunbeam-Oster Household Prods., 979 So. 2d 736 (Miss. Ct. App. 2008).

Mississippi Workers' Compensation Commission correctly found that the employee was entitled to permanent partial disability benefits where his treating physician testified to a reasonable degree of medical certainty that there were no other caused of the employee's blindness other than the trauma suffered as a result of the work-related accident. Metalloy Corp. v. Gathings, 990 So. 2d 191 (Miss. Ct. App. 2007).

Denial of appellee's workers' compensation claim was not supported by substantial evidence; appellee contemporaneously and consistently reported her injury to three supervisors as well as doctors, she had no history of back trouble, the claim was not contradicted the fact that she used personal insurance to pay for her visits, and medical records corroborated the time, nature, and origin of injury. Waffle House, Inc. v. Allam, 976 So. 2d 919 (Miss. Ct. App. 2007), writ of certiorari denied en banc by 977 So. 2d 343, 2008 Miss. LEXIS 75 (Miss. 2008).

Where several doctors opined that an employee's repetitive act of reaching for a time clock 300 to 400 times per day aggravated a pre-existing condition, temporary total disability benefits were properly awarded due to Miss. Code Ann. § 71-3-3(b). Casino Magic v. Nelson, 958 So. 2d 224 (Miss. Ct. App. 2007).

Employer's claim that the employee was not entitled to benefits in a workers' compensation action because she did not conduct a job search was inappropriate because a job search was not part of the employee's burden of proof since loss of use of two major scheduled members automatically gave rise to permanent total disability and 450 weeks of benefits as set forth in Miss. Code Ann. § 71-3-17(a)(c)(22). Union Camp Corp. v. Hall, 955 So. 2d 363 (Miss. Ct. App. 2006), writ of certiorari dismissed by 956 So. 2d 228, 2007 Miss. LEXIS 215 (Miss. 2007).

Where a claimant's injury was not scheduled, the court determined on the facts that the claimant was not entitled to partial permanent disability benefits under Miss. Code Ann. § 71-3-3(i) as the claimant failed to establish that he had sought similar work as a tire builder and the employer had refused to rehire or reinstate him. Havard v. Titan Tire Corp., 919 So. 2d 995 (Miss. Ct. App. 2005).

Medical testimony from the employee's treating physicians supported the permanence of his disability as follows: (1) one physician testified that he had suffered a 20 percent permanent medical impairment to his entire body due to his neck injury' (2) a second physician restricted him to medium duty based on clinical examinations, diagnostic tests, and his complaints of pain; (3) three years after the accident, the employee was further restricted to light duty; and (4) a third physician concluded that he would "never be able to return to duty without severe spasm." The record was clear that he was unable to return to his work as a diesel mechanic due to his injury, and that he had also incurred a 50 percent reduction in his earning capacity given his pain, his age, and his occupational history. Bryan Foods, Inc. v. White, 913 So. 2d 1003 (Miss. Ct. App. 2005), writ of certiorari denied by 921 So. 2d 344, 2005 Miss. LEXIS 710 (Miss. 2005).

Employee was not entitled to permanent disability benefits where the Workers' Compensation Commission found that the employee's pre-existing condition, as shown by her 1993 and 1998 post-injury x-ray was aggravated by her May 25, 1998 work injury; however, as illustrated by her videotaped exploits, the temporary effects of that work injury had fully subsided and any subsequent disability was attributable to the preexisting disease or condition. Lee v. Singing River Hosp., 908 So. 2d 159 (Miss. Ct. App. 2005).

Mississippi Workers' Compensation Commission properly found there was no medical evidence to support a claim for disability, either temporary or total, as a result of the employee's four slip and falls in October and November of 1997, nor was there any testimony to connect the employee's alleged injuries to the falls. One of his primary physicians, testified that the employee's complaints were the same as his complaints in 1995 after an accident the employee had while working for a different employer, and although he had gone to the emergency room after two of the 1997 falls, he did not thereafter seek treatment, and it was not until October of 1998 that he saw his primary physician and complained of an on-the-job injury while working for the employer in the case at bar; the employee admitted that he recovered from his preexisting back injuries sufficiently to enable him to maintain gainful employment, and any subsequent disability the employee claimed was not compensable. Eubanks v. Prof'l Bldg. Servs., 909 So. 2d 1132 (Miss. Ct. App. 2005).

Although the evidence conflicted, there was some evidence to suggest that the claimant had attempted to find subsequent employment, and because there was such evidence, the trial court's decision to affirm the Mississippi Workers' Compensation Commission's ruling in awarding the claimant benefits was not clearly erroneous; despite conflicting evidence regarding the claimant's notification of her injury and her possible motivations for asserting a claim, the administrative judge concluded that she had sustained a work-related injury and chose to disregard the employer's assertions to the contrary. Merit Distrib. Servs., Inc. v. Hudson, 883 So. 2d 134 (Miss. Ct. App. 2004).

Disability is determined by actual physical injury and loss of wage earning capacity. Sherwin Williams v. Brown, 877 So. 2d 556 (Miss. Ct. App. 2004).

Workers' compensation claimant's failure to pursue the remedy provided by Miss. Code Ann. § 71-3-17(b) — i.e., to seek an immediate hearing on the insurer's termination of benefits — weighed on his claims for emotional and mental distress damages brought in his bad faith claim against the insurer, but did not bar him from pursuing that bad faith claim. Liberty Mut. Ins. Co. v. McKneely, 862 So. 2d 530 (Miss. 2003).

Although a claimant is not entitled to compensation when he or she receives his or her regular salary in lieu of compensation, sick pay, vacation pay, donations or gratuities are not salary in lieu of compensation; thus, a claimant should have been awarded benefits during the time he was on vacation and receiving vacation pay where he was totally disabled at the time he took his vacation leave. Lanterman v. Roadway Express, Inc., 608 So. 2d 1340 (Miss. 1992).

Section 71-3-17(a) covers all cases of permanent total occupational disability, to the exclusion of § 71-3-17(c) which by its title and its terms covers only permanent partial occupational disability (although it may be permanent, total loss of use of a specific member); where an employee suffers an injury covered by the schedule in § 71-3-17(c) and where that injury results in a permanent loss of wage earning capacity within § 71-3-17(a), the latter section controls exclusively and the employee is not limited to the number of weeks of compensation prescribed in § 71-3-17(c)'s schedule. Smith v. Jackson Constr. Co., 607 So. 2d 1119 (Miss. 1992).

When an injury occurs which is related to the body as a whole, scheduled member standards do not apply; thus, a claimant's injury had to be treated as an injury to the body as a whole where the injury involved not only his arm, but also his upper shoulder and back. Jordan v. Hercules, Inc., 600 So. 2d 179 (Miss. 1992), but see Dulaney v. National Pizza Co., 733 So. 2d 301 (Miss. Ct. App. 1998).

There was substantial evidence supporting a finding by the Workers' Compensation Commission that a claimant's impairment was a whole body injury rather than a schedule numbered injury only, where a physician identified the claimant's malady as Meniere's Syndrome, and he testified that Meniere's Syndrome is "an inner ear dysfunction that appears to be lifelong in nature" and that it affected the entire body in that, in addition to a loss of hearing, it involved a balance dysfunction affecting the claimant's activities of daily living, both occupationally and socially. Georgia-Pacific Corp. v. Gregory, 589 So. 2d 1250 (Miss. 1991).

Generally, "medical" disability is the equivalent of functional disability and relates to actual physical impairment. "Industrial" disability is the functional or medical disability as it affects the claimant's ability to perform the duties of employment. Robinson v. Packard Elec. Div., GMC, 523 So. 2d 329 (Miss. 1988).

If claimant sustains compensable injury and receives medical treatment until discharged as cured, testimony of doctor discharging claimant may not be sufficient to rebut another doctor who examines claimant at later date and finds patient to remain in disability status, especially where claimant testifies to continued disability from injury, and thus employee with lower back injuries sustained at work was entitled to temporary total disability benefits, where testimony by employee and doctor who last saw him neither conflicted with other medical testimony nor was discredited. Davis v. Scotch Plywood Co., 505 So. 2d 1192 (Miss. 1987).

Although workers' compensation claimant is not entitled to compensation benefits during week in which employer pays or causes to be paid to claimant under company benefit plan amount at least as much as worker's compensation otherwise payable; however, employer is not entitled to credit for amount paid in excess of amount required to be paid as worker's compensation, to be applied in reducing compensation payments payable after cessation of payments under benefit plan. South Cent. Bell Tel. Co. v. Aden, 474 So. 2d 584 (Miss. 1985).

If the claimant is paid his usual wages, although he does no work at all following an injury, it is a reasonable inference that the payment is in lieu of compensation and any further compensation should not be allowed. George S. Taylor Constr. Co. v. Harlow, 269 So. 2d 337 (Miss. 1972).

The widow of a workman, who sustained a back injury during the course of his employment and who died before the entire amount of the disability award was paid, could not recover unaccrued installments of disability benefits as part of her deceased husband's estate. Southern

Brick & Tile Co. v. Clark, 247 So. 2d 692 (Miss. 1971).

Since a claim for disability is separate and distinct from a claim for death benefits, the 1960 amendment to subsection (9) of Code 1942, § 6998-02 [now subsection (i) of Code 1972, § 71-3-3], requiring that incapacity and the extent thereof be supported by medical findings, did not eliminate the presumption of causal connection between the employment and death occurring while the employee is engaged in the duties of his employment, particularly since the 1960 amendment did not affect subsection (3) of Code 1942, § 6998-02 [now subsection (c) of Code 1972, § 71-3-3]. L.B. Priester & Son v. Bynum's Dependents, 244 Miss. 196, 142 So. 2d 30 (1962), overruled on other grounds, Wilson v. Mississippi Emp. Sec. Comm'n, 643 So. 2d 538 (Miss. 1994).

One totally disabled from working by a strained back is entitled to compensation although the trouble has not been definitely diagnosed. Wilson v. International Paper Co., 235 Miss. 153, 108 So. 2d 554 (1959).

An award need not use all the terminology of Code 1942, § 6998-09(c)(2) as to the commission's right of future reconsideration. Marley Constr. Co. v. Westbrook, 234 Miss. 710, 107 So. 2d 104 (1958).

Legislature did not purpose and intend to provide greater benefits for permanent partial disability than for death or permanent total disability, and the court in construing the Workmen's Compensation Law should give effect to the legislative purpose and policy although such construction may go beyond the letter of the law. J.F. Crowe Well Servicing Contractor v. Fielder, 224 Miss. 353, 80 So. 2d 29 (1955).

2. Multiple injuries.

Claimant may recover for both injury to back and hand arising out of the same accident because statute contains no exclusiveness provision. GE Co. v. McKinnon, 507 So. 2d 363 (Miss. 1987).

Various parts of the body may be affected as the result of a single trauma. Rivers Constr. Co. v. Dubose, 241 Miss. 527, 130 So. 2d 865 (1961).

3. Weekly wage.

While the Workers' Compensation Commission did misstate Miss. Code Ann. § 71-3-17(25), the Commission used the post-injury weekly wage to aid in the determination of the employee's loss of earning capacity; therefore, by determining wage-earning capacity and not basing its calculation solely on post-injury wage, the Commission did not commit reversible error on that allegation of error. Nissan N. Am. v. Short, 942 So. 2d 276 (Miss. Ct. App. 2006).

A finding by the Workers' Compensation Commission that an injured manual laborer who was restricted by his doctor to lifting less than 40 pounds suffered only minimal industrial incapacity was not supported by substantial evidence where the decision was based largely on an alleged policy of the employer requiring workers to seek assistance when lifting more than 40 pounds, but the record contained no evidence of such a policy. DeLaughter v. South Cent. Tractor Parts, 642 So. 2d 375 (Miss. 1994).

A finding by the Workers' Compensation Commission that a lumberyard worker had sustained only a 50 percent loss of wage-earning capacity, and therefore suffered only partial rather than total permanent disability, would be reversed where the evidence indicated that he had difficulty performing "make-work" tasks at his employer's lumberyard after he returned to work and that his efforts to find other employment were unsuccessful, and the Commission's finding was based on the conclusion that the employee should have been able to secure "some type of gainful employment" merely because he had a high school education. Barnes v. Jones Lumber Co., 637 So. 2d 867 (Miss. 1994).

Where the deceased employee had been paid a total sum of $202.76 in wages, covering the 6-week period of his employment immediately prior to his death, the correct formula for determining the average weekly wage was to divide the total earnings of $202.76 by 6 weeks. Bradshaw v. Rudder, 227 Miss. 143, 85 So. 2d 778 (1956).

4. Wage earning capacity, generally.

Pursuant to Miss. Code Ann. § 71-3-17(c)(25), substantial evidence supported the Mississippi Workers' Compensation Commission's (Commission) finding that the employee suffered a loss of wage-earning capacity and its calculation and apportioning of benefits awarded; the Commission properly considered the evidence as a whole, including the employee's loss of access to the job market, her difficulty securing permanent employment and her continuing pain. Neshoba County Gen. Hosp. v. Howell, 999 So. 2d 1295 (Miss. Ct. App. 2009).

Even though the employee failed to report a work-related injury to his treating physicians, the record showed he did report it to his supervisor and the employer's nurse, the nurse having told him that there was no way he could have sustained such a neck injury at work. Further, the Mississippi Workers' Compensation Commission had substantial evidence before it to support its findings based on: (1) the medical records, (2) the opinions of five competent physicians, and (3) the results of various medical tests and procedures. Thus, the Commission's ruling that the employee could not return to work as a mechanic, and that he had incurred a 50 percent loss in his wage-earning capacity, was proper. Bryan Foods, Inc. v. White, 913 So. 2d 1003 (Miss. Ct. App. 2005), writ of certiorari denied by 921 So. 2d 344, 2005 Miss. LEXIS 710 (Miss. 2005).

Circuit Court reversed the prior ruling of a 14 percent loss of wage-earning capacity and found that the employee suffered a 30 percent loss of wage-earning capacity, and the employee appealed yet again to the appellate court. The administrative law judge based his finding of a 14 percent loss of wage-earning capacity on a consideration of the employee's age, education, work history, and medical impairment, and the employee had been consistently employed since the injury in other positions at rates of pay not substantially different than what he had previously earned; thus, in finding a 30 percent loss of earning capacity, the circuit court applied an incorrect standard of review by reweighing the evidence presented and reversing the order of the Mississippi Workers' Compensation Commission as to loss of wage-earning capacity. Richards v. Harrah's Entm't, Inc., 881 So. 2d 329 (Miss. Ct. App. 2004).

In determining whether there has been a loss of wage earning capacity, the Mississippi Workers' Compensation Commission is to evaluate training, education, ability to work, failure to be hired elsewhere, pain, and other medical circumstances. Sherwin Williams v. Brown, 877 So. 2d 556 (Miss. Ct. App. 2004).

Because the court found that it was unclear whether the calculation of loss of wage earning capacity in connection with Miss. Code Ann. § 71-3-17(c)(25) was based on evidence, the court remanded for further fact-finding or for the adoption of some other figure that better represented the current evidence. Howard Indus. v. Robinson, 846 So. 2d 245 (Miss. Ct. App. 2002).

Under subsection (c), the award was based solely on the degree of disability to the scheduled member and did not take into account the effect of that disability on the claimant's actual ability to earn wages in her post-injury condition. Weatherspoon v. Croft Metals, Inc., 881 So. 2d 204 (Miss. Ct. App. 2002).

A claimant having only a partial impairment to a scheduled member may, through other considerations, establish that, for purposes of his wage earning capacity, the impairment has rendered him or her totally occupationally disabled; in such event, the claimant is entitled to compensation for complete disability under subsection (a). Alumax Extrusions, Inc. v. Wright, 737 So. 2d 416 (Miss. Ct. App. 1998).

The extent of loss or impairment of earning capacity is a factual question for the commission to be determined on the basis of wage earning capacity in the same employment or otherwise, and an award could not be predicated upon a finding that a claimant had suffered a total and permanent loss of wage earning capacity in that she could no longer do the work of a nurse's aid, where no showing was made that she had made an effort to obtain other employment. Compere's Nursing Home v. Biddy, 243 So. 2d 412 (Miss. 1971).

Loss of wage-earning capacity is determinable by a reasonable exercise of the commission's discretion. Southeastern Constr. Co. v. Dodson's Dependent, 247 Miss. 1, 153 So. 2d 276 (1963).

While earnings after injury are not necessarily determinative of earning capacity, they are of evidential value. Hale v. General Box Mfg. Co., 235 Miss. 301, 108 So. 2d 844 (1959).

That disability may have been aggravated by the onset of disease, as to the nature of which medical experts are in disagreement, does not affect the right to compensation for loss of earning power resulting from the injury. Hale v. General Box Mfg. Co., 235 Miss. 301, 108 So. 2d 844 (1959).

After physical disability has been shown, it is for the commission to determine the extent of loss of wage-earning capacity. Hale v. General Box Mfg. Co., 235 Miss. 301, 108 So. 2d 844 (1959).

The fact that the employer had continued to pay claimant the same weekly wages that he had been receiving prior to his injury did not mean that the claimant had not sustained a permanent partial disability in his wage earning capacity. Harper Foundry & Mach. Co. v. Harper, 232 Miss. 873, 100 So. 2d 779 (1958).

The statute does not test the earning capacity of a claimant by the comparative wages received by him before and after the injury, but benefits are figured on a percentage of the claimant's average weekly wages at the time of the injury as compared to his wage earning capacity thereafter in the same employment or otherwise. Harper Foundry & Mach. Co. v. Harper, 232 Miss. 873, 100 So. 2d 779 (1958).

In determining the loss of wage earning capacity, the statutory test is calculated by comparing actual earnings before the injury with the earning capacity after the injury. Russell v. Southeastern Utils. Serv. Co., 230 Miss. 272, 92 So. 2d 544 (1957).

In determining the loss of wage earning capacity by a claimant, the workmen's compensation commission must make the best estimate of future impairment of earnings on the strength of both actual post-injury earnings and any other evidence of probative value on the issue of earning capacity, which is essentially a question of fact for the commission. Russell v. Southeastern Utils. Serv. Co., 230 Miss. 272, 92 So. 2d 544 (1957).

While earnings equal to preinjury earnings are strong evidence of nonimpairment of earning capacity, this is not conclusive, and may be rebutted by evidence independently showing or explaining away the post-injury earnings as an unreliable basis of estimating wage earning capacity. Russell v. Southeastern Utils. Serv. Co., 230 Miss. 272, 92 So. 2d 544 (1957).

The degree of a claimant's disability is calculated by comparing actual earnings before the injury with earning capacity after the injury. King v. Westinghouse Elec. Corp., 229 Miss. 830, 92 So. 2d 209 (1957).

Where a referee denied a claim for partial permanent disability because the claimant had higher weekly earnings after injury than before injury and where referee did not hear the evidence relating to increase in wage levels since the accident, or as to whether higher wage resulted from claimant's enlarged experience or from sympathy of employer, or the result of enlarged experience of the claimant, the matter should be remanded for reconsideration. Karr v. Armstrong Tire & Rubber Co., 216 Miss. 132, 61 So. 2d 789 (1953).

Where a welder's helper received higher weekly wage after injury than he was receiving at the time of injury, that fact was not in itself determinative of question of whether his partial loss of voice had so impaired his wage earning capacity as to be compensable. Karr v. Armstrong Tire & Rubber Co., 216 Miss. 132, 61 So. 2d 789 (1953).

5. — Efforts to gain employment.

Mississippi Workers' Compensation Commission found that although a claimant could not resume work in her pre-injury employment, she had not made sufficient efforts to obtain other employment to meet the definition of "disability" under Miss. Code Ann. § 71-3-3(I) because her search for other employment was not reasonable, and the Commission only awarded permanent partial disability benefits under Miss. Code Ann. § 71-3-17(c). The Commission's decision was supported by substantial evidence, and it was the Commission's to make, and in reversing the Commission's decision and awarding the claimant permanent, total disability under Miss. Code Ann. § 71-3-

17(a), the circuit court improperly invaded the Commission's decision-making authority. Lifestyle Furnishings v. Tollison, 985 So. 2d 352 (Miss. Ct. App. 2008).

Employee was properly denied permanent partial disability benefits under Miss. Code Ann. § 71-3-17(c)(25) for failure to conduct the required job search effort because even assuming that the employee's endeavor to perform yard work for a friend constituted a job search, that one attempt at securing alternative employment was insufficient to demonstrate a permanent partial disability. Chestnut v. Dairy Fresh Corp., 966 So. 2d 868 (Miss. Ct. App. 2007).

Reasonableness of a workers' compensation claimant's efforts to gain employment includes consideration of job availability and economics in the community, the claimant's skills and background, and the nature of the disability. Sherwin Williams v. Brown, 877 So. 2d 556 (Miss. Ct. App. 2004).

6. —Burden of proof.

Employee did not suffer a permanent and total occupational disability because he continued to work at a service station earning $200 per week and his reduced earnings were limited in part by a heart attack that was not work related and by his inability to find transportation; the employee's work injury was to his left foot, and the employee did not demonstrate under Miss. Code Ann. § 71-3-17(a) that his injuries, when considered in the context of other relevant circumstances, rendered him totally occupationally disabled from any form of gainful employment. McDowell v. Smith, 856 So. 2d 581 (Miss. Ct. App. 2003), cert. denied, 864 So. 2d 282 (Miss. 2004).

There was no dispute that the employee suffered some injury to her back while on duty with her employer, and there was no real issue as to whether the employee suffered from medical complaints that required substantial attention from treating physicians; however, the employee was unable to provide convincing evidence showing that her medical complaints were caused by the incident at work. Smith v. Grand Casino-Biloxi, 851 So. 2d 423 (Miss. Ct. App. 2003).

An award of permanent partial disability benefits was proper where the claimant was medically certified to be 15 percent permanently disabled, but was able to perform work at his former job. The fact that a claimant has secured some form of employment does not, by itself, negate the claimant's case for compensation; if, because of the subject injury, the claimant cannot secure employment at pre-injury pay, then the claimant may be entitled to disability payments. A claimant is not required to prove that he or she had actually been rejected, because of his or her disability, at jobs for which the claimant has stated he or she no longer considers himself or herself a qualified applicant. Thus, it was enough that the Workers' Compensation Commission, affirmed by the circuit court, found that the claimant did sustain an injury leading to a disability which had diminished his wage-earning capacity, and that he had reasonably attempted to find employment. Georgia-Pacific Corp. v. Taplin, 586 So. 2d 823 (Miss. 1991).

A claimant who suffered a 25 percent permanent impairment to the body was not entitled to an award of permanent partial disability benefits since she did not establish a loss of wage earning capacity attributable to the compensable injury, where the evidence showed that she experienced an overall increase of post-injury wages and she offered no proof to rebut the presumption of no loss of wage earning capacity by showing that the post-injury earnings were not reliable in determining wage earning capacity. International Paper Co. v. Kelley, 562 So. 2d 1298 (Miss. 1990).

A claimant was improperly awarded permanent partial disability benefits for loss of wage earning capacity, even though her incapacity to return to her job in the pasting department of a luggage company or to engage in similar employment was supported by medical findings, where the claimant did not meet her burden of proving that she had attempted to secure a job in another or different trade after her disability had subsided, and where her physician had testified that she could return to any factory-type work, so long as the environmental conditions were "clean." Sardis Luggage Co. v. Wilson, 374 So. 2d 826 (Miss. 1979).

The burden is upon the claimant not only to show loss of wage earning capacity but also to show the extent thereof, and the claimant who has established his injury and the loss of wage earning capacity but has failed to prove the extent thereof has provided no substantial evidence to support the findings of the commission that he was entitled to temporary total benefits for the full period allowed. American Potash & Chem. Corp. v. Rea, 228 So. 2d 867 (Miss. 1969).

7. —Presumption.

An injury to the back is not of the type scheduled in subsections (c)(1) through (24), so that proof of permanent diminished physical capacity, standing alone, does not entitle a claimant to compensation. Napier v. Franklin Mfg. Co., 797 So. 2d 1032 (Miss. Ct. App. 2001).

Presumption of no loss of wage earning capacity, which arises where claimant's post-injury earnings equal or exceed pre-injury earnings, was effectively rebutted, where claimant testified that his position was temporary and his pay higher than at time of injury because labor union required that one working in his position receive same pay as absent employee, and that upon return of that person he would be out of job; while statute has been construed by Court to mean that post-injury earnings equal to or in excess of pre-injury earnings are strong evidence of non-impairment of earning capacity, that presumption may be rebutted by evidence on part of claimant that post-injury earnings are unreliable due to: increase in general wage levels since time of accident, claimant's own greater maturity and training, longer hours worked by claimant, payment of wages disproportionate to capacity out of sympathy to claimant, and temporary and unpredictable character of post-injury earnings, which is not exclusive list of reasons. GE Co. v. McKinnon, 507 So. 2d 363 (Miss. 1987).

Earnings equal to preinjury earnings create a presumption of earning capacity commensurate with actual post-injury earnings, but such presumption may be rebutted by evidence independently showing incapacity, or by evidence showing that post-injury earnings are not a reliable basis for estimating earning capacity, as for example, evidence of general wage increases since the injury, or evidence as to the temporary or unpredictable character of post-injury earnings. Cox v. International Harvester Co., 221 So. 2d 924 (Miss. 1969).

Post-injury earnings equal to or in excess of pre-injury earnings are strong evidence of non-impairment of earning capacity, but the presumption arising therefrom may be rebutted by evidence on part of the claimant that the post-injury earnings are unreliable due to increase in general wage levels, claimant's own greater maturity and training, longer hours worked by claimant after accident, payment of wages disproportionate to capacity out of sympathy to complainant, and the temporary and unpredictable character of post-injury earnings. Wilcher v. D.D. Ballard Constr. Co., 187 So. 2d 308 (Miss. 1966).

8. —Disability percentage not indicative of reduction in earning capacity.

The workmen's compensation commission was in error in predicating an award of permanent partial disability upon its finding that there had been a 10 percent medical disability to the claimant's body as a whole, rather than upon a determination of the extent of loss or impairment of the claimant's wage earning capacity resulting from a compensable injury to her lower back. Compere's Nursing Home v. Biddy, 243 So. 2d 412 (Miss. 1971).

Loss of earning power as the result of an injury is not necessarily proportional to the bodily functional disability. Hale v. General Box Mfg. Co., 235 Miss. 301, 108 So. 2d 844 (1959).

Where there was a stipulation that the claimant suffered 25 percent partial permanent disability and that such rating of disability was to constitute basis for decision, this stipulation would not be construed to mean an agreement that 25 percent disability was to be taken as 25 percent disability in claimant's earning capacity. Elliott v. Ross Carrier Co., 220 Miss. 86, 70 So. 2d 75 (1954).

9. — Particular cases; no loss in earning capacity.

Court of appeals erred in finding that an employee made a prima facie showing of permanent total disability and in awarding her compensation because the substantial evidence supported a finding that the employee did not have a permanent, total disability, and there was substantial evidence that the lack of employment was not due to the employee's injury; the employee's termination notice stated that she was being terminated due to her probationary status rather than as a consequence of her injury, and the Mississippi Workers' Compensation Commission's conclusion that the employee was unable to find employment due to the depressed economic conditions in the area where she lived and not to the injury itself was based on substantial evidence presented by the employee's expert. he employee was terminated from her position with the group home shortly after her accident. Lott v. Hudspeth Ctr., 26 So. 3d 1044 (Miss. 2010).

Workers' compensation claimant was not entitled to permanent partial disability benefits where he failed to demonstrate that his post-injury earnings were temporary or unpredictable; his wages had steadily increased since his job with the employer, and he had not been unemployed for any significant period of time after his termination. Mosby v. Farm Fresh Catfish Co., 19 So. 3d 789 (Miss. Ct. App. 2009).

Employee was properly denied disability benefits for carpal tunnel syndrome because all three doctors who had examined the employee testified that the employee could perform the duties of a rivet-machine operator post-injury; two doctors opined that the employee should have no work restrictions, and the third doctor stated that he had no problem with a three-pound lifting restriction, which was more than the heaviest part the employee would have to lift as a rivet-machine operator. Wooten v. Franklin Corp., 9 So. 3d 1182 (Miss. Ct. App. 2009).

Modified award of temporary total disability benefits was appropriate in a case where a benefits claimant injured his arm because the time following surgery was the only time that the injury prevented him from earning wages; but for his unrelated firing, the claimant could have been working. Lankford v. Rent-A-Center, Inc., 961 So. 2d 774 (Miss. Ct. App. 2007).

Employee's recent jobs, activities and education constituted substantial evidence to support the Workers' Compensation Commission's finding of a less than a total loss of use; the employee did not demonstrate a loss of wage-earning capacity, which was a factor in whether or not occupational disability was greater than the medical loss of use would indicate. Meridian Prof'l Baseball Club v. Jensen, 828 So. 2d 740 (Miss. 2002).

A claimant was not entitled to permanent total disability benefits, even though his neurosurgeon and his chiropractor found him to be totally disabled, where the claimant continued to work full time for his employer and therefore showed no loss of wage earning capacity as a result of his injuries. Lanterman v. Roadway Express, Inc., 608 So. 2d 1340 (Miss. 1992).

A commission finding that a claimant, who suffered a back injury and was said to have sustained a permanent partial disability of 10 to 15% to the body as a whole, had not sustained an impairment of his earning capacity was sufficiently supported by the claimant's post-injury history of steady employment at substantially increased earnings for a five-year period. Smith v. Picker Serv. Co., 240 So. 2d 454 (Miss. 1970).

Where there was medical testimony to the effect that a claimant, who suffered an accidental injury in the nature of a myocardial infarction in the course of his employment, would be able to and should engage in some work but would have to take precautions to work at a more deliberate pace than prior to his injury and should work only the minimum time necessary to make a living, but other proofs showed that the claimant was doing the same type of work as before the accident and was earning more wages, the evidence supported the finding of the commission that the claimant had not suffered a loss of his wage-earning capacity. Cox v. International Harvester Co., 221 So. 2d 924 (Miss. 1969).

10. — — Loss in earning capacity demonstrated.

Award of permanent disability benefits was supported by substantial evidence because after reviewing an employee's age, education, work history, and physical restrictions, it was apparent that the employee had suffered a loss in wage-earning. Omnova Solutions, Inc. v. Lipa, 44 So. 3d 1000 (Miss. Ct. App. 2009), reversed by, remanded by 44 So. 3d 935, 2010 Miss. LEXIS 426 (Miss. 2010).

Workers' compensation benefits claimant was entitled to permanent total disability benefits under Miss. Code Ann. § 71-3-17(a) where she provided documentation that she had made 194 attempts to find another job, and there was no substantial evidence showing that the claimant's efforts were a sham, less than reasonable, or without proper diligence. Lott v. Hudspeth Ctr., 26 So. 3d 1057 (Miss. Ct. App. 2008), reversed by 26 So. 3d 1044, 2010 Miss. LEXIS 11 (Miss. 2010).

Award of permanent total disability benefits to the employee for 450 weeks under Miss. Code Ann. § 71-3-17(a) was proper in part because job search efforts undertaken by the employee were reasonable and not a mere sham; substantial evidence existed to support a finding that the employee sustained a total loss of wage earning capacity. Adolphe Lafont USA, Inc. v. Ayers, 958 So. 2d 833 (Miss. Ct. App. 2007).

There was no error in awarding a benefits claimant permanent partial disability under Miss. Code Ann. § 71-3-17(c)(25) because the claimant's age, training, education, and work restrictions were taken into account in setting her wage loss earning capacity; moreover, her refusal to relocate to another state for sedentary work was not unreasonable. AirTran, Inc. v. Byrd, 953 So. 2d 296 (Miss. Ct. App. 2007), reversed by, remanded by 987 So. 2d 905, 2007 Miss. LEXIS 569 (Miss. 2007).

Determination that an employee sustained a 50 percent industrial loss of use in her right arm and award of permanent partial disability benefits was affirmed because, inter alia: (1) the Mississippi Workers' Compensation Commission properly considered a variety of evidence in determining that the employee suffered a loss of wage-earning capacity and a 50 percent industrial loss of use to her right upper extremity; and (2) the Commission's decision to award the employee benefits for permanent partial disability was supported by substantial evidence, including the treating physician's restrictions on the employee and the employee's testimony. Levi Strauss & Co. v. Studaway, 930 So. 2d 481 (Miss. Ct. App. 2006).

Substantial evidence supported the finding of the Mississippi Worker's Compensation Commission that the employee, a 61-year-old heavy equipment operator, was permanently and totally disabled due to spinal stenosis and related complications and that he had suffered a total loss of wage-earning capacity. While the medical evidence was in dispute as to whether he had suffered a total or partial permanent injury, it was a dispute to be resolved by the Commission; the Commission chose to credit a primary treating physician's assessment that the employee could not hold any type job, and that assessment was corroborated by the employee's testimony as well as the employer's statement to the Mississippi Public Employees Retirement System that the employee was totally disabled. Pike County Bd. of Supervisors v. Varnado, 912 So. 2d 477 (Miss. Ct. App. 2005), writ of certiorari denied by 921 So. 2d 344, 2005 Miss. LEXIS 668 (Miss. 2005).

Where a 60-year old employee suffered several fractures to his hip in addition to compression of his L-4 vertebra and could no longer withstand the duties of longhaul trucking, ample evidence existed to support the Mississippi Workers' Compensation Commission's finding that he suffered a loss of wage earning capacity of $ 400 per week. The undisputed testimony demonstrated that he earned half of his regular salary as a longhaul truck driver while driving short hauls or working in the loading and packing divisions, and that he had sought light duty work from both his employer and his union, but that none was offered; thus, an award of permanent partial disability benefits was proper. Alumax Extrusions, Inc. v. Hankins, 902 So. 2d 586 (Miss. Ct. App. 2004).

Employee who received medical treatment after suffering pain in his hip while carrying a roll of carpet up a staircase was entitled to permanent, total disability benefits. He suffered a 10 percent permanent partial rating and faced limited employment options; and therefore suffered a loss in earning capacity. Sherwin Williams v. Brown, 877 So. 2d 556 (Miss. Ct. App. 2004).

Workers' Compensation Commission's award of compensation for permanent partial disability due to partial loss of scheduled members took no account of the worker's loss of wage earning capacity, and the employer failed to rebut the presumption of total occupational loss of members by proof of the worker's ability to earn the same wages she was receiving at the time of her injury. McDonald v. I. C. Isaacs Newton Co., 879 So. 2d 486 (Miss. Ct. App. 2004), cert. denied, 882 So. 2d 234 (Miss. 2004).

Workers' compensation claimant successfully rebutted the presumption of no loss of wage earning capacity that arose because claimant was earning more than at the time of claimant's injury, and although the 55 percent loss of earning capacity figure adopted by the Mississippi Workers' Compensation Commission was originally an arbitrary figure chosen by claimant's attorney, the commission's acceptance of that figure was found to have been knowing and intentional. Greenwood Utils. v. Williams, 801 So. 2d 783 (Miss. Ct. App. 2001).

Evidence was sufficient to support the administrative law judge's finding that the claimant was entitled to temporary total disability benefits based on his finding that the claimant's coronary artery disease was job-related; a physician testified that he did not think the claimant should continue to work as the stress on his job made his condition worse, notwithstanding contrary testimony from two other physicians. City of Laurel v. Blackledge, 1999 Miss. App. LEXIS 333 (Miss. Ct. App. June 22, 1999), subst. op., 755 So. 2d 573 (Miss. Ct. App. 2000).

Despite a claimant's increase in earnings, his earning capacity and his employability in the market place had been reduced due to Meniere's Syndrome where the presumption of earning capacity commensurate with post-injury earnings was rebutted by the following factors: (1) Meniere's Syndrome is a whole body disability; (2) it is lifelong in nature; (3) it affects the activities of daily living, both occupationally and socially; (4) the claimant's daily bouts with vertigo would put him at a disadvantage in an industrial setting where there were machines in operation; (5) one of the claimant's biggest fears was losing his balance and falling into one of the machines he was operating; and (6) there had been an increase in general wage levels for all employees in the claimant's class since 1984. Georgia-Pacific Corp. v. Gregory, 589 So. 2d 1250 (Miss. 1991).

Where claimant has a disability which prevented him from performing some of the duties incidental to his occupation as a welder, and diminished his capacity for earning wages in that occupation, compensation could not be denied because, due to the generosity of his employer, he had suffered no loss of pay up to the time of the hearing. O'Neal v. Multi-Purpose Mfg. Co., 243 Miss. 775, 140 So. 2d 860 (1962).

Where it was shown that although a claimant's post-injury earnings following his maximum possible medical recovery had equalled or slightly exceeded his pre-injury earnings, such earnings had been possible through the action of a sympathetic union rather than to his actual capacity due to work assigned to him, there was substantial evidence to support the commission's finding that the claimant had suffered a 50 percent loss in wage earning capacity. Russell v. Southeastern Utils. Serv. Co., 230 Miss. 272, 92 So. 2d 544 (1957).

11. Amount of recovery.

Finding in favor of the employee in his workers' compensation action was proper pursuant to Miss. Code Ann. §§ 71-3-17(c)(25), 71-3-37(5), and 71-3-15, where the employee offered medical proof that the injury manifested its symptoms in an area other than that of the initial impact; further, the computation of disability benefits totaled one cent less than the amount awarded by the administrative judge and the appellate court did not find a one-cent rounding error difference arbitrary or capricious, Miss. Code Ann. § 71-3-17(25). Cives Steel Co. Port of Rosedale v. Williams, 905 So. 2d 661 (Miss. Ct. App. 2004).

A claimant cannot pyramid both compensation under subsection (a) for total loss of wage earning capacity and compensation under subsection (c) for total loss of an arm. Hollingsworth v. I.C. Isaacs & Co., 725 So. 2d 251 (Ct. App. 1998).

The evidence was sufficient to support a finding of July 8, 1988, as the date of an employee's maximum medical recovery from a leg injury, where the employee's treating physician had initially indicated that the employee had reached maximum medical recovery on August 27, 1987 when he was originally released to return to work, but the physician subsequently stated that the employee did not reach maximum medical recovery until July 8, 1988 because the employee continued to suffer from swelling and pain following the August release and the physician continued reassessment and treatment in the hope that the employee's condition would improve. McGowan v. Orleans Furn., Inc., 586 So. 2d 163 (Miss. 1991).

Where substantial evidence establishes a causal connection between claimant's surgery for repair of a hernia and the physical discomforts and disabilities suffered since that time, a claimant is not necessarily limited to the specific award for hernia alone. Knight v. Stachel, 193 So. 2d 593 (Miss. 1967).

Temporary total disability extends only during its continuance and until maximum medical recovery. Arender v. National Sales, Inc., 193 So. 2d 579 (Miss. 1966), motion granted, 195 So. 2d 90 (Miss. 1967).

Where the employee, an unskilled laborer, suffered a ruptured disc from picking up a 60 pound bag of sugar, the commission concluded properly that he had suffered a loss of wage earning capacity in the amount of $18 per week or a loss of approximately 27½ percent. Malone & Hyde of Tupelo, Inc. v. Kent, 250 Miss. 879, 168 So. 2d 526 (1964).

The right to medical expenses continues after expiration of the maximum benefit period or the payment of the maximum amounts of weekly benefits. J.H. Moon & Sons v. Hood, 244 Miss. 564, 144 So. 2d 782 (1962).

The minimum award which may be made for permanent partial disability is that fixed by Code 1942, § 6998-07. Wiygul Motor Co. v. Pate, 237 Miss. 325, 115 So. 2d 51 (1959).

An award of temporary benefits is a continuing one from the date of the commission's order during the continuance of temporary disability. Komp Equip. Co. v. Clinton, 236 Miss. 569, 112 So. 2d 541 (1959).

Where it was undisputed that claimant became totally and permanently disabled July the 26th, 1955, the date of the injury, the order of the commission should have awarded total permanent disability compensation benefits from that date for 450 weeks, but not to exceed $8,600, whichever was less. Nicholas Co. v. Dodson, 232 Miss. 569, 99 So. 2d 666 (1958).

To warrant payment of compensation as for the loss of an eye, the loss of vision must aggregate 80 percent or more, whether binocular or other vision, so that a claimant, whose loss of visual acuity, combined with the loss of binocular vision in extreme field of vision beyond 35 degrees, resulted in an overall 60 percent loss of an eye, was entitled to compensation for only 60 weeks. White v. R.C. Owen Co., 232 Miss. 268, 98 So. 2d 650 (1957).

Where claimant suffered a heart attack while in the employment and his heart condition was diagnosed as a coronary occlusion resulting in a myocardial infarction causing a 50 percent permanent partial disability, the over-all maximum award should be limited to $8,600. Mississippi Prods., Inc. v. Gordy, 224 Miss. 690, 80 So. 2d 793 (1955).

A carpenter who suffered a broken bone in the leg in the course of employment and had lost the use of the leg, was entitled to 175 weeks which was the maximum period for which recovery was permitted on that account. M.T. Reed Constr. Co. v. Martin, 215 Miss. 472, 61 So. 2d 300 (1952).

In computing compensation benefits to a widow the probability of remarriage before the expiration of the 450 weeks during which the widow is entitled to compensation must be taken into account.

United States Fid. & Guar. Co. v. Smith, 211 Miss. 573, 52 So. 2d 351 (1951).

12. Loss of or injury to scheduled members.

Claimant is entitled to benefits based on total loss of use of a scheduled member if it is shown that the person is no longer able to perform the customary acts of that person's usual employment; the job held at the time of the claimant's injury was not necessarily the usual employment, but rather, the usual employment was broader in scope than the job held at the time of injury, and included jobs in which the claimant had past experience, jobs requiring similar skills, or other jobs for which the worker was suited, such that there was substantial evidence to rebut a presumption of total occupational loss and deny the claimant's sympathy wages argument. Walker v. Delta Steel Bldgs., 878 So. 2d 113 (Miss. Ct. App. 2003).

Workers' compensation award based on diminished wage-earning capacity rather than a scheduled member injury to the arms under Miss. Code Ann. § 71-3-17(c) was affirmed because there was substantial evidence supporting the factual conclusion that the symptoms of pain manifested themselves in the neck and shoulder area, the mere fact that the employee's use of his upper extremities in certain ways acted as a triggering mechanism for the disabling pain he experienced in his neck, shoulders, and upper back did not transform his claim into a scheduled member injury, and there was no proof that the employee's physical complaints related directly to his arms rather than his neck and shoulders. Arendale v. Balkamp, Inc., 879 So. 2d 448 (Miss. Ct. App. 2003), cert. denied, 878 So. 2d 66 (Miss. 2004).

Workers' compensation statutes guaranteed a measure of compensation to an injured worker who suffered a permanent impairment to a scheduled member as the result of a work-related injury, and the claimant's injury to both hands qualified as a scheduled member under the statute; moreover the measure of compensation guaranteed was in spite of the fact that the claimant appeared to have suffered no loss of wage-earning capacity. Ard v. Marshall Durbin Cos., — So. 2d —, 2001 Miss. App. LEXIS 540 (Miss. Ct. App. Dec. 18, 2001), opinion withdrawn by, substituted opinion at 818 So. 2d 1240, 2002 Miss. App. LEXIS 326 (Miss. Ct. App. 2002).

The determination for permanent partial disability benefits for the industrial loss of the use of a scheduled member does not encompass an identification of wage earning capacity, but rather a determination of functional loss of use presented by medical evidence and the impact that the loss of function has on the worker's ability to perform the normal and customary duties associated with the claimant's usual employment; thus, evidence regarding a claimant's post-injury wage earnings is not relevant to such a determination. McCarty Farms, Inc. v. Banks, 773 So. 2d 380 (Miss. Ct. App. 2000).

The measure of compensation to an injured worker who suffers a permanent functional impairment to a scheduled member as the result of a work-related injury and the impact that the loss of function of the particular scheduled member has on the worker's ability to perform the normal and customary duties associated with her usual employment, called the degree of industrial disability, is a question of fact to be determined from the evidence. Robinette v. Henry I. Siegal Co., 801 So. 2d 739 (Miss. Ct. App. 2000).

Where the claimant injured his foot, which was considered a scheduled member under the statute, his loss of wage earning capacity was irrelevant; therefore, it was immaterial whether he attempted to or failed to find employment after reaching maximum medical improvement. Cook v. President Casino, 740 So. 2d 963 (Miss. Ct. App. 1999).

A claimant seeking compensation for an occupational disability to a scheduled member which exceeds the assigned partial functional impairment and yet falls short of 100% must establish under subsection (c) that the partial impairment has adversely impacted his or her wage earning capacity to an extent greater than the medical percentage of impairment. Alumax Extrusions, Inc. v. Wright, 737 So. 2d 416 (Miss. Ct. App. 1998).

Where a worker's occupational disability from loss of use of a scheduled member exceeds functional or medical impairment, the law measures the worker's compensation by the former. Walker Mfg. Co. v. Cantrell, 577 So. 2d 1243 (Miss. 1991).

Even though a worker suffered injury only to the second and third fingers of his left hand, the Compensation Commission's finding that the disability rating under § 71-3-17 was to the entire hand as opposed to a percentage of disability to the fingers only was not in error under the particular facts of the particular claim. Flake v. Randle Reed Trucking Co., 458 So. 2d 223 (Miss. 1984).

Where the great weight of evidence indicated that a worker had sustained an injury to his shoulder with functional loss affecting only the right arm, compensation was properly limited to the schedule which includes the right arm; such an injury would not be related to the body as a whole. Richey v. City of Tupelo, 361 So. 2d 995 (Miss. 1978).

A workman while using a machete who suffered severe cuts to three fingers of his right hand and an aggravation of a preexisting gastrointestinal trouble was entitled to permanent partial disability and the medical expenses occasioned as the result of the cuts and the treatment of his gastrointestinal troubles. Weyerhaeuser Co. v. Ratliff, 197 So. 2d 231 (Miss. 1967).

Where a claimant suffered a permanent partial disability of the right arm as a consequence of falling from a ladder and striking a concrete driveway with his shoulder, and there was no medical finding of fracture or tear and that portion of his disability attributable to the injury consisted only of a mild or subacute tenosymovitis, his injury was correctly related to his loss of use of the arm, a scheduled member rather than to a general physical disability. Walters Bros. Bldrs. v. Loomis, 187 So. 2d 586 (Miss. 1966).

An employee who, as a consequence of an injury, underwent an operation in which both the medial and the lateral ligaments of his right knee were removed, which resulted in some atrophy of the leg due largely to wastage of the quadricepts muscle, had not, on the basis of uncontradicted medical evidence, suffered a total loss of use of his right leg. Harris & Johnson Constr. Co. v. Ward, 187 So. 2d 26 (Miss. 1966).

Severance of the tendons of two fingers, resulting in only a 50% loss of use of such fingers, does not entitle one to have disability proportioned to the whole hand. Luker v. Greenville Sheet Metal Works, 240 Miss. 378, 127 So. 2d 863 (1961).

Compensation may not be awarded for disfigurement resulting from the loss of an eye, in addition to compensation for such loss. Williams v. Roy Motor Co., 237 Miss. 750, 115 So. 2d 924 (1959).

Although the pupil of one of the claimant's eyes, which was injured in an industrial accident, was almost twice as large as the other eye, the refusal of the commission to make an award for disfigurement did not constitute an abuse of its discretion, where it appeared that the claimant, as long as he continued to work for the employer, received the same wage as he had received before the injury. White v. R.C. Owen Co., 232 Miss. 268, 98 So. 2d 650 (1957).

Claimant could not recover compensation for permanent partial disability under subsection (c) of this section [Code 1942, § 6998-09] as a result of an injury whereby he lost a testicle where there was no disabling pain. Jones v. Mason & Dulion Co., 229 Miss. 638, 91 So. 2d 715 (1957).

Where workmen's compensation commission made an award based on evidence that the employee had sustained a total permanent loss of use of his arm, the commission did not award compensation for permanent total disability but only for permanent loss of use of the arm. Modern Laundry v. Williams, 224 Miss. 174, 79 So. 2d 829 (1955).

In a workmen's compensation proceeding the estimates of two doctors as to the extent of the claimant's loss of use of the left arm were mere estimates of medical disability, and it was for the commission to decide whether the claimant's loss of use of the arm was a total loss of use or partial loss of use for wage-earning purposes. Modern Laundry v. Williams, 224 Miss. 174, 79 So. 2d 829 (1955).

Under the Workmen's Compensation Law which provides for compensation for loss of an eye, removal of a totally sightless eyeball was covered by the Law and the claimant was entitled to compensation. McKenzie v. Gulf Hills Hotel, 221 Miss. 723, 74 So. 2d 830 (1954).

An employee who lost the partial use of his right leg as the result of injuries sustained in the course of employment as a pipe fitter was not entitled to an award for 450 weeks but was entitled to compensation only for proportionate part of maximum period of 175 weeks. Nowlin v. Mississippi Chem. Co., 219 Miss. 873, 70 So. 2d 49 (1954).

13. Loss of or injury to non-scheduled members.

A claimant whose vocal cords were severed as the consequence of an accident, with the result that he could not thereafter speak above a whisper, was totally and permanently disabled where the use of his voice was essential to his employment. Aetna Fin. Co. v. Bourgoin, 252 Miss. 852, 174 So. 2d 495 (1965).

Evidence held to warrant finding of total and permanent disability resulting from twisting of knee in turning to pick up bundle. I. Taitel & Son v. Twiner, 247 Miss. 785, 157 So. 2d 44 (1963).

Since the claimant, who sustained, in addition to extensive damage to his arms, permanent damage to the muscles in his chest, left shoulder and back, and suffered 20 percent disability to his body as a whole, did not suffer scheduled injuries, his disability must be determined under subsection (c)(21) [now (25)] of this section [Code 1942, § 6998-09]. Russell v. Southeastern Utils. Serv. Co., 230 Miss. 272, 92 So. 2d 544 (1957).

14. Calculation of disability period limitation.

Employee was entitled to temporary disability benefits under Miss. Code Ann. § 71-3-21 for a certain period of time, and only for those periods within that time when the employee was, because of the injury, unable to work and earn full pay, and the case was remanded to reflect this fact; it was error to have awarded the employee a total amount of temporary benefits under Miss. Code Ann. § 71-3-17(b), with a credit to the employer for any compensation earned by the employee during that time, because this was not a total disability, and this calculation did not lead to the proper credit. Howard Indus. v. Robinson, 846 So. 2d 245 (Miss. Ct. App. 2002).

Where the loss of a scheduled member is less than total, claimant is entitled to compensation at a rate of 66⅔% of his average weekly wage, subject to the maximum limitations for weekly benefits contained in the Workmen's Compensation Act, for a period of time determined by multiplying the number of weeks compensation for such member by the percentage loss of that member. Stuart Mfg. Co. v. Walker, 313 So. 2d 574 (Miss. 1975).

The number of weeks during which temporary total benefits have been paid are not to be deducted from the maximum period for permanent partial disability benefits. Midland Shirt Co. v. Ray, 249 Miss. 486, 163 So. 2d 251 (1964).

Where the claimant's disability had been total from the date of the injury, the period of 450 weeks, prescribed as the limitation, should be calculated from the date of the injury. Prince v. Nicholson, 229 Miss. 718, 91 So. 2d 734 (1957).

Where claimant's heart attack, suffered on August 14, 1952, was first found to have brought about temporary total disability, but on May 17, 1954, it was determined that claimant's disability was permanent total and had been since the date of his heart attack, claimant, who had in the meanwhile received compensation payments for temporary total disability, was not entitled then to start over again and recover for permanent total disability, was not entitled then to start over again and recover for permanent total disability for the maximum period, but could recover only the maximum compensation for permanent total disability, less the amount already paid to him. Morgan v. J.H. Campbell Constr. Co., 229 Miss. 289, 90 So. 2d 663 (1956).

The formula of compensation for permanent partial disability, resulting from fractures in transverse processes of the lumbar vertebrae, which medical testimony indicated to be from 10 percent to 50 percent, is 66⅔% of the difference between the claimant's average weekly wages and his wage earning capacity thereafter, and not an apportionment of the percentage of permanent partial disability to the number of weeks allowed for total disability and payment of claimant's regular compensation rate for the number of weeks thus determined, since such an injury comes within the "other cases" classification of this section [Code 1942, § 6998-09] and compensation benefits are limited to the sum of $8,600. Ebasco Servs., Inc. v. Harris, 227 Miss. 85, 85 So. 2d 784 (1956).

15. Disability rating.

Employee was properly awarded permanent partial disability benefits for carpal tunnel syndrome because the employee's ability to earn post-injury wages, although at a diminished capacity, precluded an award of permanent total disability benefits; the employee did not sufficiently pursue any of the available jobs provided by a vocational expert. Price v. Omnova Solutions, Inc., 17 So. 3d 104 (Miss. Ct. App. 2009), writ of certiorari denied by 17 So. 3d 99, 2009 Miss. LEXIS 425 (Miss. 2009).

Ability to earn post-injury wages, even significantly diminished post-injury wages, defeats a claim of permanent total disability. Hill v. Mel, Inc., 989 So. 2d 969 (Miss. Ct. App. 2008).

Where an employee was injured while working, was terminated, and sought workers' compensation benefits, it was not error to find that the employee was 20% permanently partially disabled, because, inter alia, (1) the ability to earn post-injury wages, even significantly diminished post-injury wages, defeated a claim of permanent total disability, and (2) the employee found employment meeting the "usual employment" standard based on a bus driver job. Hill v. Mel, Inc., 989 So. 2d 969 (Miss. Ct. App. 2008).

Permanent partial disability benefits were properly awarded to an employee where a preponderance of the evidence reflected that the employee suffered an industrial impairment beyond either set of medical impairment ratings assigned; the employee suffered a 60 percent loss of industrial use of the right upper extremity and a 60 percent loss of industrial use of the left upper extremity. Neill v. Waterway, Inc./Team America, 994 So. 2d 196 (Miss. Ct. App. 2008), writ of certiorari denied by 998 So. 2d 1010, 2008 Miss. LEXIS 684 (Miss. 2008).

Mississippi workers' compensation commission acted properly in determining that the employee's treating physician's opinions were not as credible as those of the other physicians; the employee's injury was subject to disability benefits set forth in Miss. Code Ann. § 71-3-17(c)(1), and not the general total body impairment scheme under Miss. Code Ann. § 71-3-17(c)(25). Martinez v. Swift Transp., 962 So. 2d 746 (Miss. Ct. App. 2007).

Where the employee injured her right elbow while working on the assembly line, one doctor gave his opinion in favor of total disability; two other doctors opined against total disability. The Mississippi Workers' Compensation Commission did not err by denying her permanent disability benefits; the Commission found that she suffered only a fifteen percent (15%) disability as to her right upper extremity. Smith v. Durant Elec. Corp., 918 So. 2d 860 (Miss. Ct. App. 2005).

In a workers' compensation case where the administrative judge awarded the claimant permanent total disability benefits under Miss. Code Ann. § 71-3-17, but the Mississippi Workers' Compensation Commission found in favor of the employer and denied those benefits, the appellate court exceeded its limited scope of review, Miss. Code Ann. § 71-3-51, in upholding the circuit court's ruling which overturned the decision of the Commission that the claimant had not sustained a second work-related injury because the Commission's ruling that the claimant had not sustained such an injury was clearly supported by substantial evidence including: (1) the testimony of the claimant's co-workers that the claimant did not report a second injury; (2) the fact that, aside from the claimant's own treating physician, there was no medical evidence supporting her claim of a second injury; and (3) the fact that the only persons testifying as to the claimant's alleged second injury were the claimant, her family, and her treating physician. Raytheon Aero. Support Servs. v. Miller, 861 So. 2d 330 (Miss. 2003).

The claimant should have been assigned a permanent total disability rating and received 450 weeks of benefits where (1) although his second and third fingers were not seriously injured, his little finger was half amputated, his ring finger was shortened at the first joint, and even after several surgeries, he had no feeling or motion in his thumb and could not grip with it, (2) the claimant had constant pain in his left hand, attributable in large part to neuromas in his palm, ring finger, and thumb which caused him pain when he touched anything, and (3) the claimant was rendered permanently incapable of performing the only job he had ever been trained to do, i.e., trim carpenter. Good Earth Dev., Inc. v. Rogers, 800 So. 2d 1164 (Miss. Ct. App. 2001).

A road construction worker was properly determined to suffer from three permanent partial disabilities, rather than permanent total disability, notwithstanding his inability to return to his pre-injury job, where (1) the employer offered to rehire the worker as a flagman, (2) the worker was furnished with a vocational rehabilitation counselor who attempted to work with him to identify and pursue other employment opportunities, but he was uncooperative, missed two scheduled appointments with the counselor, and apparently never pursued any of the job positions identified by the counselor, and (3) there was no evidence that the worker independently pursued any other gainful employment for which he might have been suited, taking into account his diminished physical abilities. McCray v. Key Constructors, Inc., 803 So. 2d 1199 (Miss. Ct. App. 2000).

The decision of the Commission awarding permanent partial disability was upheld where there was substantial evidence in the record to support a determination that claimant failed to demonstrate that her industrial disabilities, as measured by her ability to perform her usual pre-injury employment, exceeded the functional impairment indicated by the expert medical evidence. Robinette v. Henry I. Siegal Co., 801 So. 2d 739 (Miss. Ct. App. 2000).

The claimant was properly found to be permanently and totally disabled, rather than permanently and partially disabled, where (1) although she returned to work after she injured her wrist, she worked in constant pain, and (2) all attempts to find work or prospects of employment for the claimant were unsuccessful. Sunbeam/Oster Co. v. Bolden, 722 So. 2d 713 (Miss. Ct. App. 1998).

When a claimant, having reached maximum medical recovery, reports back to his or her employer for work, and the employer refuses to reinstate or rehire the claimant, then it is prima facie that the claimant has met his or her burden of showing total disability; the burden then shifts to the employer to prove a partial disability or that the claimant has suffered no loss of wage earning capacity. Jordan v. Hercules, Inc., 600 So. 2d 179 (Miss. 1992), but see Dulaney v. National Pizza Co., 733 So. 2d 301 (Miss. Ct. App. 1998).

The evidence supported a finding that an employee suffered a 100 percent industrial loss of use of his left leg, rather than only a 40 percent loss, even though the employee's treating physician testified that the employee had a 40 percent permanent partial impairment of his left leg, where the physician also testified that the employee would be limited in activities such as standing for long periods, climbing ladders and stairs, and carrying heavy loads but that he could work in sedentary types of positions where he could sit to do the work, the employee was a 43-year-old man who dropped out of school during the 10th grade, from that time until the time of his injury he worked in construction, did carpentry work, and delivered furniture, at the time of the injury he was employed at a furniture company where he did not perform any one particular job but was moved around from job to job as needed, some of the jobs that he performed at the company included working in the sanding department, cutting out chest-of-drawer tops, and working in the mill, the employee testified that after his injury he could not do carpentry work and could not do any jobs which required him to stand but he could sand edges and use a table saw, and he testified that he continued to have problems with his leg every day, including swelling and pain. McGowan v. Orleans Furn., Inc., 586 So. 2d 163 (Miss. 1991).

A claimant may continue to be temporarily disabled, even though he or she has received maximum recovery from conservative care, if his or her condition can be improved by surgery. McGowan v. Orleans Furn., Inc., 586 So. 2d 163 (Miss. 1991).

The evidence was sufficient to support a finding that a claimant suffered only a 5 percent permanent partial occupational disability by reason of a work-connected injury to his left hand, where the claimant failed to offer evidence that he had unsuccessfully attempted to perform his usual duties, and he failed to offer evidence that he was refused employment based upon the disability to his hand in that he made no search for work outside his prior employment, stating that his car had been repossessed and he was without transportation. Walker Mfg. Co. v. Cantrell, 577 So. 2d 1243 (Miss. 1991).

An employee's job-related contact dermatitis caused by exposure to sulfur dioxide constituted a permanent loss of wage earning capacity, such that the employee was entitled to permanent partial disability benefits, where the employee's sensitivity was permanent in nature so that he could not be exposed to sulfur dioxide in the future, and he made reasonable though unsuccessful efforts to find other comparably gainful employment. Piper Indus., Inc. v. Herod, 560 So. 2d 732 (Miss. 1990).

An employee was entitled to an award of total temporary disability payments for essential tremors even though the condition was a permanent partial disability from its onset since, until the tremors were controllable or predictable, the condition was totally disabling. Quitman Knitting Mill v. Smith, 540 So. 2d 623 (Miss. 1989).

An employee who was injured when some crates fell from a truck, striking her on the legs and back and knocking her unconscious, sustained an accident back injury which totally disabled her when she attempted to work at the advice of the company doctor for more than a year after the accident, and she was entitled to temporary total disability benefits and to a further determination as to the permanence of her injury, a finding that she had sustained no permanent injury being premature and unsupported by substantial evidence. Jordan v. Arkansas Valley Indus., Inc., 241 So. 2d 143 (Miss. 1970).

The burden of proof is upon the claimant to establish the degree of his disability, and the degree of disability, whether permanent or temporary, involves (1) actual physical injury and (2) loss of wage earning capacity. American Potash & Chem. Corp. v. Rea, 228 So. 2d 867 (Miss. 1969).

A claimant whose employment-induced contact dermatitis prevented him from following in the future his occupation as a cement finisher was entitled only to an award of temporary total disability where, under the provisions of Code 1942, § 6998-02(9) [now subsection (i) of Code 1972, § 71-3-3], he must, after his disability subsides, seek employment in another or different trade to earn his wages, and there was no evidence that he had done so. B.J. Collins v. Mississippi Emp. Sec. Comm'n, 190 So. 2d 894 (Miss. 1966).

Where claimant's entire disability relates back to the beginning of his rating of temporary total disability, and it becomes permanent at a later time, claimant is not entitled to recover both for temporary total disability up to the date on which it was discovered to be permanent and also to recover for permanent total disability after the discovery of such total disability, and he is limited to recovering only the maximum allowable for permanent total disability beginning with the date of the injury. Dillingham Mfg. Co. v. Upton, 252 Miss. 281, 172 So. 2d 766 (1965), but see Cockrell Banana Co. v. Harris, 212 So. 2d 581 (Miss. 1968).

Construction employee held entitled to more than 50% disability, and to compensation for total loss of the use of a leg where, though a fracture healed, he was unable to do former heavy work. Tyler v. Oden Constr. Co., 241 Miss. 270, 130 So. 2d 552 (1961).

Where award has been made for temporary total disability and disability proves to be permanent, the award may be amended to award compensation for total permanent disability in an amount from which compensation paid is to be deducted. Mullins & Parker v. Rucker, 237 Miss. 330, 115 So. 2d 535 (1959).

An award to a person contracting disabling dermatitis from handling creosote-coated pipe should be for temporary total disability benefits during its continuance. Komp Equip. Co. v. Clinton, 236 Miss. 569, 112 So. 2d 541 (1959).

Adjudicated permanent disability is presumed to continue until the commission, upon appropriate hearings, determines otherwise. Jackson Ready-Mix Concrete v. Young, 236 Miss. 550, 111 So. 2d 255 (1959).

Temporary disability is not conclusively presumed to continue until the appellate court's affirmance of an award therefor, so as to require payments of compensation for the period of pendency of the appeal. Jackson Ready-Mix Concrete v. Young, 236 Miss. 550, 111 So. 2d 255 (1959).

An award of 60% loss of use of a left hand by one who lost nearly all of his first, second and third fingers, held supported by substantial evidence. Pearl River Hampers, Inc. v. Castilow, 234 Miss. 768, 108 So. 2d 200 (1959).

Where the finding of the attorney-referee and the commission that claimant was partially and permanently disabled to the extent of 15 percent to the body as a whole, and that such disability resulted in a loss of 17 percent wage-earning capacity, was supported by substantial evidence, circuit court's judgment of reversal was reversed by the supreme court, and the case remanded to the commission. Grubbs v. Revell Furn. Co., 234 Miss. 319, 106 So. 2d 390 (1958).

Under a medical showing that the claimant was suffering from an injury to his spine and was unable to perform his work and would remain in that condition until he underwent surgery, the claimant was totally disabled within the meaning of subsection (b) of this section [Code 1942, § 6998-09] and was entitled to temporary total disability benefits until he recovered from the operation and obtained maximum recovery, at which time his benefit for permanent partial disability under subsection (c) could be evaluated. Houston Contracting Co. v. Reed, 231 Miss. 213, 95 So. 2d 231 (1957).

Where both the claimant and a doctor, who had last examined him on October 6, 1955, testified at a hearing beginning on September, 1955 and concluding in November, 1955, that the claimant was suffering from a temporary total disability resulting from injury received in his employment, the circuit court properly reversed the workmen's compensation board's order denying claimant compensation benefits after June 5, 1955, which was based upon the opinion of a doctor who had last examined claimant on May 5, 1955, that claimant would be able to return to work within another month. Masonite Corp. v. Fields, 229 Miss. 524, 91 So. 2d 282 (1956).

In a workmen's compensation case where a roustabout sustained several skull fractures when a piece of iron pipe fell out of a set of poles and struck him on the head, his temporary total disability did not terminate when he returned to work under the advice of a doctor who was obviously seeking to ascertain to what extent the patient was responding to treatment. J.F. Crowe Well Servicing Contractor v. Fielder, 224 Miss. 353, 80 So. 2d 29 (1955).

16. Pre-existing disease or infirmity.

While employee had a pre-existing back injury, no doctor ever excluded the work-related fall as a causal factor to the employee's disability, no one disputed that he was totally and permanently disabled, and one doctor testified that the employee's condition was consistent with an individual who had recently suffered a fall; thus, award of workers' compensation benefits was supported by substantial evidence. Frito-Lay, Inc. v. Leatherwood, 908 So. 2d 175 (Miss. Ct. App. 2005).

Trial court erred in reversing Workers' Compensation Commission's award of permanent total disability; there was substantial evidence to support the Commission's finding that the claimant's employment was a substantial contributing cause of her disability; and, the trial court erred when it reweighed the evidence rather than looking to see if there was substantial evidence to support the Commission's decision. Spencer v. Tyson Foods, Inc., 869 So. 2d 1069 (Miss. Ct. App. 2004).

Last injurious exposure rule was applicable where substantial evidence showed claimant's injury resulted from 31 spent years working for the former employer, and any aggravation suffered with the subsequent employer, did not independently contribute to claimant's final disability, as the undisputed facts showed claimant's foot bothered claimant so severely while employed with the former employer, that claimant underwent two surgeries, and had incurred several periods of disability while with the former employer. Craft v. Millcreek Rehab. Ctr., 854 So. 2d 508 (Miss. Ct. App. 2003).

Where one enjoys the functional ability to perform his work in spite of an existing congenital defect and suffers an injury which aggravates the said defect, thereafter causing a loss of his functional ability, then as long as the functional loss continues the injured party is eligible for compensation; when an injury causes loss of functional ability, it is compensable, even though such loss was due to aggravation of a preexisting congenital defect. Bolton v. Catalytic Constr. Co., 309 So. 2d 167 (Miss. 1975).

A claimant who has once been adjudged totally and permanently disabled and who has received benefits therefor, but who thereafter resumes gainful employment and becomes injured while so engaged, is not precluded from receiving benefits for loss of wage earning capacity arising out of the later injury; however, a claimant may not pyramid benefits and receive in excess of the maximum weekly benefit provided by statute during any one period. Observa-Dome Lab., Inc. v. Ivy, 302 So. 2d 862 (Miss. 1974).

A workman while using a machete who suffered severe cuts to three fingers of his right hand and an aggravation of a preexisting gastrointestinal trouble was entitled to permanent partial disability and the medical expenses occasioned as the result of the cuts and the treatment of his gastrointestinal troubles. Weyerhaeuser Co. v. Ratliff, 197 So. 2d 231 (Miss. 1967).

A claimant suffering from cystic emphysema who, as a consequence of inhaling plastic dust and chemical fumes in the course of his employment, suffered a spontaneous pneumothorax was entitled to receive temporary total disability payments for the period that his lung remained collapsed, for his condition had been aggravated by his employment. Presto Mfg. Co. v. Chandler, 252 Miss. 36, 172 So. 2d 431 (1965).

Where the employee suffered from a pre-existing heart disease for which he was receiving veteran's compensation, and his disability arose from an attack of acute coronary insufficiency, or angina pectoris, it was a temporary condition caused by the pre-existing disease, any subsequent disability was the consequence of that disease, and the disability resulting from the attack was not a permanent one compensable under this section [Code 1942, § 6998-09]. Todd v. Potts Gin Co., 251 Miss. 340, 169 So. 2d 442 (1964).

Compensation for an injury which aggravates a pre-existing condition ceases where the effects of the injury have subsided, though the pre-existing condition continues. Lloyd Ford Co. v. Price, 240 Miss. 250, 126 So. 2d 529 (1961); Malone v. Ingalls Shipbuilding Corp., 240 Miss. 319, 127 So. 2d 403 (1961).

Recurrences of dermatitis attributable to and connected with the original occurrence are compensable by the employer for whom claimant was working when the infection first begun. Komp Equip. Co. v. Clinton, 236 Miss. 569, 112 So. 2d 541 (1959).

Where an employee's injury aggravated a pre-existing disease or infirmity, such injury is compensable, and the amount of the award is not scaled down because the disability resulting from the injury complained of might be due in part to the pre-existing disease or infirmity. Kahne v. Robinson, 232 Miss. 670, 100 So. 2d 132 (1958).

Since the questions of whether the worker's leg injury, sustained in the course of his employment, aggravated his pre-existing varicose vein condition, or whether the worker's pre-existing condition aggravated the leg injury, were for the commission, an award to the worker for temporary total disability would be affirmed where the court was unable to say that the commission's decision was not supported by the evidence. Jackson Ready-Mix Concrete v. Young, 230 Miss. 644, 93 So. 2d 645 (1957).

Where it was shown that claimant's condition, following an operation for a pre-existing disease, was aggravated by the strain caused by her industrial employment and that, as a result, she was unable to do the work which she formerly did, claimant was entitled to recover for permanent partial disability. King v. Westinghouse Elec. Corp., 229 Miss. 830, 92 So. 2d 209 (1957).

17. —Apportionment.

The Workers' Compensation Commission properly apportioned an employee's disabilities between 2 injuries where there was no evidence of a causal connection between the 2 injuries. Cawthon v. Alcan Aluminum Corp., 599 So. 2d 925 (Miss. 1991).

Apportionment of an award of compensation based on the claimant's pre-existing heart condition was proper, even though his pre-existing heart condition caused no pre-injury occupational disability, since the heart attack which left the plaintiff permanently and totally disabled was materially contributed to by his pre-existing obstructive pulmonary disease and his hypertension. Mitchell Buick, Pontiac & Equip. Co. v. Cash, 592 So. 2d 978 (Miss. 1991).

Commission finding of fact on apportionment of disability between injury on job and pre-existing condition will be reversed on appeal where finding has been made in broad conclusory language for which reviewing court finds no substantial evidence in record. South Cent. Bell Tel. Co. v. Aden, 474 So. 2d 584 (Miss. 1985).

The trial court was in error in awarding a nurse's aid total and permanent disability on the ground that she was disabled from doing the work of a nurse's aid and from doing work of a like character as a result of compensable injury to her lower back, without apportionment on account of a pre-existing condition or injury to her lower back. Compere's Nursing Home v. Biddy, 243 So. 2d 412 (Miss. 1971).

Where there is a previous injury or disability, permanent partial disability benefits must be apportioned from the date of the claimant's maximum medical recovery. Central Elec. & Mach. Co. v. Shelton, 220 So. 2d 320 (Miss. 1969).

Where the commission found that the reactivation of claimant's pre-existing tuberculosis, culminating in hemorrhaging, was an incident growing out of and in the course of his employment, that the pre-existing condition and claimant's work activities combined to cause claimant to become permanently and totally disabled and to prevent him from returning to the same or similar employment, he was entitled to a 50 percent apportionment of benefits. Jackson Ready-Mix Concrete v. Meadows, 198 So. 2d 576 (Miss. 1967).

Where the amputation of claimant's leg was necessitated in part by his pre-existing osteomyelitis, he was not entitled to receive the stated compensation provided by this section [Code 1942, § 6998-09], but his award was required to be apportioned as provided in Code 1942, § 6998-04. Communications Equip. Co. v. Burke, 186 So. 2d 765 (Miss. 1966).

18. Multiple injuries.

Where multiple injuries are sustained by the employee in a single accident, affecting directly two members of the same extremity, if the injuries result in some disability to the greater member other than that occasioned by disability to the lesser member, the disability rating should be for loss of use of the greater member. Armstrong Cork Co. v. Sheppard, 222 Miss. 359, 76 So. 2d 225 (1954).

Where there were multiple injuries to the employee's foot and lower part of the leg above the ankle, attorney-referee and commission were amply justified in holding that the basis of the award of compensation to the claimant should be proportionate to the loss of use of the leg as a whole, and in refusing to attempt to separate the injury to the leg above the ankle from the injuries to the foot for the purpose of evaluating the appellee's claim for compensation. Armstrong Cork Co. v. Sheppard, 222 Miss. 359, 76 So. 2d 225 (1954).

19. Maximum medical improvement.

Modification of the disability award in a workers' compensation action down to a 30 percent permanent partial disability award was appropriate under Miss. Code Ann. §§ 71-3-3(i) and 71-3-17(a) because the employee failed to prove that he suffered permanent total disability. The employee was released by two doctors without work restrictions and he failed to reapply or make an otherwise diligent effort to return to work with the employer after reaching maximum medical improvement; further, one doctor was unable to explain the employee's subjective complaints about pain in his leg and another doctor was likewise also unable to explain the employee's complaints of decreased sensation in the leg. Smith v. Johnston Tombigbee Furniture Mfg. Co., 43 So. 3d 1159 (Miss. Ct. App. 2010), writ of certiorari denied by 49 So. 3d 106, 2010 Miss. LEXIS 470 (Miss. 2010).

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Workers' compensation benefits for a permanent disability were denied because a claimant did not show that he suffered any disability or loss of wage-earning capacity due to a lower back injury where he had reached maximum medical improvement; all of the physicians cleared the claimant for work, none of them found physical problems, the claimant subsequently worked other jobs with similar duties, there were no complaints about his work performance, and he stated that his back was not a problem. Leslie v. SAIA Motor Freight, 970 So. 2d 218 (Miss. Ct. App. 2007).

Mississippi Workers' Compensation Commission did not abuse its discretion in finding that surgery for a claimant's L5-S1 condition was not medically reasonable or necessary, and that she had reached maximum medical improvement, as doctors testified that the need for surgery depended on her subjective experience of, and tolerance for, pain, and the credibility of her testimony in that regard was for the administrative law judge and Commission to determine. Barber Seafood, Inc. v. Smith, 911 So. 2d 454 (Miss. 2005).

RESEARCH REFERENCES

ALR. Excessiveness or adequacy of damages awarded for injuries to head or brain, or for mental or nervous disorders. 14 A.L.R.4th 328.

Excessiveness of adequacy of damages awarded for injuries to, or condition induced in, circulatory, digestive, and glandular systems. 14 A.L.R.4th 539.

Workers' compensation: bonus as factor in determining amount of compensation. 84 A.L.R.4th 1055.

What amounts to failure or refusal to submit to medical treatment sufficient to bar recovery of workers' compensation. 3 A.L.R.5th 907.

Excessiveness or adequacy of damages awarded for injuries to head or brain. 50 A.L.R.5th 1.

Excessiveness or adequacy of damages awarded for injuries to nerves or nervous system. 51 A.L.R.5th 467.

Excessiveness or adequacy of damages awarded for injuries causing mental or psychological damages. 52 A.L.R.5th 1.

Right to workers' compensation for physical injury or illness suffered by claimant as result of nonsudden mental stimuli-Right to compensation under particular statutory provisions. 122 A.L.R.5th 653.

Am Jur. 26 Am. Jur. Trials 645, Workmen's Compensation—Employment Party Injury Litigation.

33 Am. Jur. Trials 467, Pathologist as Expert Witness: Malpractice Considerations.

36 Am. Jur. Trials 573, Worker's Compensation: Compensability of Multiple Sclerosis.

37 Am. Jur. Trials 115, Contractor's Liability for Mishandling Toxic Substance.

15 Am. Jur. Proof of Facts 2d 711, Physician's Failure to Obtain Informed Consent to Innovative Practice or Medical Research.

17 Am. Jur. Proof of Facts 2d 575, Physician's Use of Excessive Radiation.

19 Am. Jur. Proof of Facts 2d 485, Malpractice Liability in Genetic Counseling.

22 Am. Jur. Proof of Facts 2d 135, Carbon Monoxide Brain Damage.

25 Am. Jur. Proof of Facts 2d 1, Workers' Compensation: Disability Resulting from Mental Stress.

26 Am. Jur. Proof of Facts 2d 421, "Total Disability" of Insured Attorney.

27 Am. Jur. Proof of Facts 2d 361, Anosmia.

30 Am. Jur. Proof of Facts 2d 95, Brain Injuries Due to Trauma.

30 Am. Jur. Proof of Facts 2d 341, Aphasia.

30 Am. Jur. Proof of Facts 2d 511, Traumatic Cause or Aggravation of Condition Affecting Mobility of Joints.

31 Am. Jur. Proof of Facts 2d 265, Rupture of Blood Vessel Due to Trauma.

31 Am. Jur. Proof of Facts 2d 611, Cardiovascular Shock.

32 Am. Jur. Proof of Facts 2d 217, Aplastic Anemia.

32 Am. Jur. Proof of Facts 2d 559, Peptic Ulcer.

36 Am. Jur. Proof of Facts 2d 335, Hip Injuries.

37 Am. Jur. Proof of Facts 2d 223, Neck Injuries.

38 Am. Jur. Proof of Facts 2d 285, Lumbar Spine Injuries.

40 Am. Jur. Proof of Facts 2d 263, Hearing Loss Due to Trauma.

42 Am. Jur. Proof of Facts 2d 481, Workers' Compensation: Injury Occurring During Social, Recreational, or Athletic Activity.

44 Am. Jur. Proof of Facts 2d 1, Burn Injuries.

45 Am. Jur. Proof of Facts 2d 1, Asbestosis.

45 Am. Jur. Proof of Facts 2d 137, Qualification of Chiropractor as Expert Witness.

45 Am. Jur. Proof of Facts 2d 249, Intentional Infliction of Emotional Stress by Employer.

46 Am. Jur. Proof of Facts 2d 145, Lead Poisoning.

46 Am. Jur. Proof of Facts 2d 221, Forensic Audiology: Workers' Compensation for Noise-Induced Hearing Loss.

46 Am. Jur. Proof of Facts 2d 275, Foundation for Admission of Thermogram.

48 Am. Jur. Proof of Facts 2d 401, Beryllium Poisoning.

48 Am. Jur. Proof of Facts 2d 431, Arsenic Poisoning.

50 Am. Jur. Proof of Facts 2d 1, Providing Significant Disability from Mild Head Injuries.

1 Am. Jur. Proof of Facts 3d 123, Temporomandibular Joint Injuries.

1 Am. Jur. Proof of Facts 3d 197, Recovery for Severe Burn Injuries.

1 Am. Jur. Proof of Facts 3d 291, Toxic Liver Injury.

2 Am. Jur. Proof of Facts 3d 1, Facial Injuries.

2 Am. Jur. Proof of Facts 3d 657, Pelvic Injuries.

4 Am. Jur. Proof of Facts 3d 73, Admissibility and Reliability of Electrocardiogram.

7 Am. Jur. Proof of Facts 3d 143, Workers' Compensation for Attendant Care Services by Family Members.

8 Am. Jur. Proof of Facts 3d 1, Carpal Tunnel Syndrome.

8 Am. Jur. Proof of Facts 3d 145, Use of CAT Scans in Litigation.

CJS. 99 C.J.S., Workers' Compensation §§ 516 et seq.

Practice References. Bender's Labor and Employment Bulletin (Matthew Bender).

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Mississippi Workers' Compensation Laws and Rules Annotated, 2010 Edition with CD-ROM (Michie).

§ 71-3-19. Maintenance while undergoing vocational rehabilitation.

An employee who as a result of injury is or may be expected to be totally or partially incapacitated for a remunerative occupation and who, under the direction of the commission is being rendered fit to engage in a remunerative occupation may, in the discretion of the commission under regulations adopted by it, receive additional compensation necessary for his maintenance, but such additional compensation shall not exceed Ten Dollars ($10.00) a week for not more than fifty-two (52) weeks.

SOURCES: Codes, 1942, § 6998-10; Laws, 1948, ch. 354, § 8d; Laws, 1950, ch. 412, § 6; Laws, 1958, ch. 454, § 3; reenacted without change, Laws, 1982, 1980 ch 473, § 10; reenacted without change, Laws, 1990, ch. 405, § 10, eff from and after July 1, 1990.

Cross References — Vocational Rehabilitation Law of Mississippi, see §§ 37-33-11 et seq.

RESEARCH REFERENCES

ALR. Workers' compensation; vocational rehabilitation statutes. 67 A.L.R.4th 612.

Law Reviews. Steiner, The Americans with Disabilities Act of 1990 and workers' compensation: the employees' perspective. 62 Miss. L. J. 631 (Spring, 1993).

§ 71-3-21. Temporary partial disability.

In case of temporary partial disability resulting in decrease of earning capacity, there shall be paid to the injured employee sixty-six and two-thirds percent (66-⅔%) of the difference between the injured employee's average weekly wages before the injury and his wage-earning capacity after the injury in the same or other employment, subject to the maximum limitations as to weekly benefits as set up in this chapter, payable during the continuance of such disability but in no case exceeding four hundred fifty (450) weeks or an amount greater than the multiple of four hundred fifty (450) weeks times sixty-six and two-thirds percent (66-⅔%) of the average weekly wage for the state.

SOURCES: Codes, 1942, § 6998-11; Laws, 1948, ch. 354, § 8e; Laws, 1950, ch. 412, § 6; Laws, 1958, ch. 454, § 3; Laws, 1968, ch. 559, § 6; Laws, 1972, ch. 522, § 4; Laws, 1976, ch. 459, § 3; Laws, 1979, ch. 442, § 3; Laws, 1981, ch. 341, § 3; reenacted, Laws, 1982, ch. 473, § 11; Laws, 1984, ch. 402, § 3; Laws, 1988, ch. 446, § 4; reenacted without change, Laws, 1990, ch. 405, § 11, eff from and after July 1, 1990.

Editor's Note — Laws of 1988, ch. 446, § 6, provides as follows:
"SECTION 6. This act shall take effect and be in force from and after July 1, 1988; provided, however, the increase in benefits allowed under this act shall apply only to claims arising on or after July 1, 1988".

Cross References — Temporary total disability, see § 71-3-17.
Determination of wages, see § 71-3-31.

JUDICIAL DECISIONS

1. In general.

Employee was entitled to temporary disability benefits under Miss. Code Ann. § 71-3-21 for a certain period of time, and only for those periods within that time when the employee was, because of the injury, unable to work and earn full pay, and the case was remanded to reflect this fact; it was error to have awarded the employee a total amount of temporary benefits under Miss. Code Ann. § 71-3-17(b), with a credit to the employer for any compensation earned by the employee during that time, because this was not a total disability, and this calculation did not lead to the proper credit. Howard Indus. v. Robinson, 846 So. 2d 245 (Miss. Ct. App. 2002).

The claimant was not entitled to temporary partial disability benefits for the period during which he received more compensation for his employment in a new position than in his previous jobs. City of Laurel v. Blackledge, 1999 Miss. App. LEXIS 333 (Miss. Ct. App. June 22, 1999), subst. op., 755 So. 2d 573 (Miss. Ct. App. 2000).

Against the argument that having once found permanent partial disability, the commission should not thereafter make findings of temporary disability since such would prolong permanent payments on a subsequent finding of a new temporary disability, the commission properly awarded temporary disability after having found permanent partial disability where the evidence supported the award and the order allowed credit for benefits paid. Weaver Pants Co. v. Duncan, 231 So. 2d 489 (Miss. 1970).

To require a hearing each two weeks to determine whether temporary disability continues would not be reasonable. Komp Equip. Co. v. Clinton, 236 Miss. 569, 112 So. 2d 541 (1959).

The commission, in determining the period for which compensation for temporary disability should be allowed, following supreme court's affirmance of an award made by an attorney-referee, should require payment from the making of the award to the date of its approval by the commission. Jackson Ready-Mix Concrete v. Young, 236 Miss. 550, 111 So. 2d 255 (1959).

Temporary disability is not conclusively presumed to continue until the appellate court's affirmance of an award therefor, so as to require payments of compensation for the period of pendency of the appeal. Jackson Ready-Mix Concrete v. Young, 236 Miss. 550, 111 So. 2d 255 (1959).

RESEARCH REFERENCES

ALR. Workers' compensation: bonus as factor in determining amount of compensation. 84 A.L.R.4th 1055.

Am Jur. 36 Am. Jur. Trials 573, Worker's Compensation: Compensability of Multiple Sclerosis.

CJS. 99 C.J.S., Workers' Compensation §§ 545-549, 551-555, 582 et seq.

§ 71-3-23. Hernia.

In all cases of claim for hernia, it shall be shown by a preponderance of the evidence:

(a) That the descent or protrusion of the hernia or rupture immediately followed as the result of sudden effort, severe strain, or the application of force to the abdominal wall;

(b) That there was severe pain in the region of the hernia or rupture;

(c) That there has been no descent or protrusion of the hernia or rupture prior to the accident for which compensation is claimed;

(d) That the physical distress resulting from the descent or protrusion of the hernia or rupture was noticed immediately by claimant, and communicated to his employer within a reasonable time; and

(e) That the physical distress following the descent or protrusion of the hernia or rupture was such as to require the attendance of a licensed physician or surgeon within five (5) days after the injury for which compensation is claimed. Postoperative hernias shall be considered as original hernias.

In every case of hernia or rupture as above defined, it shall be the duty of the employer forthwith to provide the necessary and proper medical, surgical, and hospital care and attention to effectuate a cure by radical operation of said hernia or rupture, and to pay compensation under the provisions of paragraph (b) of Section 71-3-17, not exceeding, however, a period of twenty-six (26) weeks.

In case the employee shall refuse to permit such operation, it shall be the duty of the employer to provide all necessary first aid, medical and hospital care and services, to supply the proper and necessary truss or other mechanical appliance to enable said employee to resume work, and shall further pay compensation under the provisions of paragraph (b) of Section 71-3-17, not exceeding, however, the period of thirteen (13) weeks.

In case death results within a period of one (1) year, either from the hernia or rupture or from the radical operation thereof, compensation shall be paid the dependents as provided in other death cases under this chapter.

SOURCES: Codes, 1942, § 6998-12; Laws, 1948, ch. 354, § 8f; Laws, 1950, ch. 412, § 6; Laws, 1958, ch. 454, § 3; Laws, 1960, ch. 280; reenacted without change, Laws, 1982, ch. 473, § 12; reenacted without change, Laws, 1990, ch. 405, § 12, eff from and after July 1, 1990.

Cross References — Compensation for death, see § 71-3-25.
Determination of wages, see § 71-3-31.

JUDICIAL DECISIONS

1. In general.
2. Existence of pain.
3. Previous descent or protrusion.
4. Attendance of physician.
5. Death.
6. Amount of recovery.

1. In general.

This section [Code 1942, § 6998-12] applies only if the hernia results from an accidental injury that arose out of and in the course of the employee's employment, but where an employee sustains internal injuries while on the job which require surgical entering into the abdomen which results in a postoperative hernia, this section has no application. Con-Plex, Inc. v. Clack, 207 So. 2d 83 (Miss. 1968).

The required preponderance may be produced by circumstantial evidence. Williams v. Alwyne Jordan Curing Plant, 244 Miss. 685, 145 So. 2d 686 (1962).

This section [Code 1942, § 6998-12] applies in the case of a hernia caused by the workman's accidental contact with a moving wheel. Rogers v. Vicksburg Hardwood Co., 240 Miss. 780, 129 So. 2d 124 (1961).

This section [Code 1942, § 6998-12] includes diaphragmatic hernias. Commans v. Ingalls Shipbuilding Corp., 240 Miss. 373, 128 So. 2d 114 (1961).

In a workmen's compensation case, where judgment of circuit court and the award of commission merely adjudicated that the claimant should have all the benefits of the Workmen's Compensation Law as related to hernia without awarding any definite fixed sum of money, on appeal the supreme court, upon affirmance of judgment, could not allow damages. J. & B. Mfg. Co. v. Cochran, 216 Miss. 336, 62 So. 2d 378 (1953).

Under this section [Code 1942, § 6998-12], when, as a result of sudden effort or severe strain, or both, there is a severe strain in the hernial region, and the employee is rendered unable to work, if the pain is sufficient to require the services of a doctor within forty-eight hours, and if the occurrence is communicated to his employer within that time, the hernia is compensable. Lucedale Veneer Co. v. Rogers, 211 Miss. 613, 48 So. 2d 148 (1950), error overruled 211 Miss. 613, 53 So. 2d 69.

2. Existence of pain.

Description by an employee that the sensation was like a bee sting, and the pain became worse in the afternoon and severe that night conclusively established existence of pain, required in cases of claim for hernia in that there was severe pain in the hernial region. Lucedale Veneer Co. v. Rogers, 211 Miss. 613, 48 So. 2d 148 (1950), error overruled 211 Miss. 613, 53 So. 2d 69.

3. Previous descent or protrusion.

Where the record showed that there had been a previous descent or protrusion of hernia before the accident in question, appellants failed to bring their claim within the requirements of this section [Code 1942, § 6998-12]. Flood's Dependents v. NCO Open Mess, Columbus Air Force Base, 238 Miss. 207, 118 So. 2d 294 (1960).

Where the evidence not only failed to prove that there had been no descent or protrusion of the hernia prior to the accident for which compensation was claimed, but, in fact, clearly showed to the contrary, the action of the commission in denying compensation to the claimant would be affirmed. Ray v. Wells-Lamont Glove Factory, 236 Miss. 154, 109 So. 2d 544 (1959).

While generally a pre-existing disease or infirmity does not disqualify a claim under the "arising out of employment" requirements of the Workmen's Compensation Law if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the death or disability for which compensation is sought, in hernia cases effect must be given to this section [Code 1942, § 6998-12]. Fagan v. Wells-Lamont, Inc., 228 Miss. 660, 89 So. 2d 632 (1956).

In view of this section [Code 1942, § 6998-12] claimant's failure to prove that there had been no descent or protrusion of her incisional hernia prior to the accident for which compensation was claimed barred recovery benefits for the aggravation of a pre-existing hernia. Fagan v. Wells-Lamont, Inc., 228 Miss. 660, 89 So. 2d 632 (1956).

The provision of this section [Code 1942, § 6998-12] that a claimant must prove by a preponderance of the evidence that there has been no descent or protrusion of a hernia prior to the accident for which compensation is claimed is a statutory prerequisite to recovery for hernia claims. Dependents of Flood v. NCO Open Mess, 238 Miss. 207, 118 So. 2d 294 (1960); Ryan Supply Co. v. Brett, 222 Miss. 30, 75 So. 2d 75 (1954), motion overruled, 222 Miss. 30, 75 So. 2d 721 (1954).

4. Attendance of physician.

A claimant for workmen's compensation benefits who suffered a hernia while carrying heavy pipe and immediately went to see the company's nurse, who advised him that she would send him to a doctor if it happened again, satisfied the statutory requirement that physical distress following the sudden protrusion of a hernia must require the attendance of a doctor within five days after the injury; the fact that he did not actually see a doctor within five days did not defeat the claim. Bechtel Constr. Co. v. Bartlett, 371 So. 2d 398 (Miss. 1979).

Where claimant was injured on June 10, 1964, did not see a doctor until 55 days later on August 4, 1964, did not quit work until 57 days after his injury, and was operated on for an inguinal hernia on August 7, 1964, the evidence was insufficient to establish that he "required" the attendance of a physician or surgeon within 5 days following his injury. Biloxi Motor Co. v. Barry, 192 So. 2d 403 (Miss. 1966).

In the provision in this section [Code 1942, § 6998-12] which requires attendance of physician within five days after injury for which compensation is claimed, the word "require" means to want, to need, to call for, and this section does not require that injured employee in a hernia case be denied compensation because he was not actually attended by a licensed physician within the five-day period. Lindsey v. Ingalls Shipbuilding Corp., 219 Miss. 437, 68 So. 2d 872 (1954).

Where a workman employed as a ship fitter sustained an injury on Monday while he was engaged in helping to remove some heavy brackets from bulkhead just before quitting time and then he went home and remained in bed, suffering severe pain until the following Monday when he reported to the company hospital and was told that he had hernia, the employee was entitled to compensation for hernia even though he had not been attended by a physician until one week after the injury. Lindsey v. Ingalls Shipbuilding Corp., 219 Miss. 437, 68 So. 2d 872 (1954).

Where hernia suffered by compensation claimant did not require attendance of physician until eight or nine days thereafter, claimant was precluded from recovering compensation therefor by paragraph 4 of Code 1942, § 6998-12 [now subsection (e) of Code 1972, § 73-3-23]. Meador v. Dollar Store, 217 Miss. 447, 64 So. 2d 574 (1953).

5. Death.

No distinction is made between disability and death claims in hernia cases. Flood's Dependents v. NCO Open Mess, Columbus Air Force Base, 238 Miss. 207, 118 So. 2d 294 (1960).

The final sentence of this section [Code 1942, § 6998-12] is not construable as meaning that death claims resulting from hernia or operations therefor are not restricted by the five precedent requirements set out in the section. Flood's Dependents v. NCO Open Mess, Columbus Air Force Base, 238 Miss. 207, 118 So. 2d 294 (1960).

6. Amount of recovery.

Where substantial evidence establishes a causal connection between claimant's surgery for repair of a hernia and the physical discomforts and disabilities suffered since that time, a claimant is not necessarily limited to the specific award for hernia alone. Knight v. Stachel, 193 So. 2d 593 (Miss. 1967).

Compensation is not limited to that provided for hernia where repair surgery induced a coronary occlusion. McBride v. Wetmore & Parman, Inc., 241 Miss. 743, 133 So. 2d 261 (1961).

One claiming compensation in addition to the statutory allowance for a hernia has the burden of showing that the injury caused additional disability resulting in a greater and more prolonged incapacity than the hernia. Rivers Constr. Co. v. Dubose, 241 Miss. 527, 130 So. 2d 865 (1961).

That a hernia injury affects a nerve in the vicinity, causing severe pain, is not ground for additional compensation. Rivers Constr. Co. v. Dubose, 241 Miss. 527, 130 So. 2d 865 (1961).

RESEARCH REFERENCES

ALR. Workers' compensation: reasonableness of employee's refusal of medical services tendered by employer. 72 A.L.R.4th 905.

Am Jur. 82 Am. Jur. 2d, Workers' Compensation § 279.

25 Am. Jur. Pl & Pr Forms (Rev), Workmen's Compensation, Forms 54, 116.

5 Am. Jur. Proof of Facts 699, Hernia.

7 Am. Jur. Proof of Facts 3d 143, Workers' Compensation for Attendant Care Services by Family Members.

CJS. 99 C.J.S., Workers' Compensation §§ 344, 345.

§ 71-3-25. Compensation for death.

If the injury causes death, the compensation shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following:

(a) An immediate lump sum payment of Two Hundred Fifty Dollars ($250.00) to the surviving spouse, in addition to other compensation benefits.

(b) Reasonable funeral expenses not exceeding Two Thousand Dollars ($2,000.00) exclusive of other burial insurance or benefits.

(c) If there be a surviving spouse and no child of the deceased, to such surviving spouse thirty-five percent (35%) of the average wages of the deceased during widowhood or dependent widowhood and, if there be a surviving child or children of the deceased, the additional amount of ten percent (10%) of such wages for each such child. In case of the death or remarriage of such surviving spouse, any surviving child of the deceased employee shall have his compensation increased to fifteen percent (15%) of such wages, provided that the total amount payable shall in no case exceed sixty-six and two-thirds percent (66-⅔%) of such wages, subject to the maximum limitations as to weekly benefits as set up in this chapter. The commission may, in its discretion, require the appointment of a guardian for the purpose of receiving the compensation of a minor dependent. In the absence of such a requirement, the appointment of a guardian for such purposes shall not be necessary, provided that if no legal guardian be appointed, payment to the natural guardian shall be sufficient.

(d) If there be a surviving child or children of the deceased but no surviving spouse, then for the support of each such child twenty-five percent (25%) of the wages of the deceased, provided that the aggregate shall in no case exceed sixty-six and two-thirds percent (66-⅔%) of such wages, subject to the maximum limitations as to weekly benefits as set up in this chapter.

(e) If there be no surviving spouse or child, or if the amount payable to a surviving spouse and to children shall be less in the aggregate than sixty-six and two-thirds percent (66-⅔%) of the average wages of the deceased, subject to the maximum limitations as to weekly benefits as set up in this chapter, then for the support of grandchildren or brothers and sisters, if dependent upon the deceased at the time of the injury, fifteen percent (15%) of such wages for the support of each such person; and for the support of each parent or grandparent of the deceased, if dependent upon him at the time of injury, fifteen percent (15%) of such wages during such dependency. But in no case shall the aggregate amount payable under this subsection exceed the difference between sixty-six and two-thirds percent (66-⅔%) of such wages and the amount payable as hereinbefore provided to surviving spouse and for the support of surviving child or children, subject to the maximum limitations as to weekly benefits as set up in this chapter.

(f) The total weekly compensation payments to any or all beneficiaries in death cases shall not exceed the weekly benefits as set up in this chapter and shall in no case be paid for a longer period than four hundred fifty (450) weeks or for a greater amount than the multiple of four hundred fifty (450) weeks times sixty-six and two-thirds percent (66-⅔%) of the average weekly wage for the state.

(g) All questions of dependency shall be determined as of the time of the injury. A surviving spouse, child or children shall be presumed to be wholly dependent. All other dependents shall be considered on the basis of total or partial dependence as the facts may warrant.

SOURCES: Codes, 1942, § 6998-13; Laws, 1948, ch. 354, § 9; Laws, 1950, ch. 412, § 7; Laws, 1958, ch. 454, § 4; Laws, 1968, ch. 559, § 7; Laws, 1972, ch. 522, § 5; Laws, 1976, ch. 459, § 4; Laws, 1979, ch. 442, § 4; Laws, 1981, ch. 341, § 4; reenacted by Laws, 1982, ch. 473, § 13; Laws, 1984, ch. 402, § 4; Laws, 1984, ch. 499, § 2; Laws, 1988, ch. 446, § 5; reenacted without change, Laws, 1990, ch. 405, § 13, eff from and after July 1, 1990.

Editor's Note — Laws of 1988, ch. 446, § 6, provides as follows:

"SECTION 6. This act shall take effect and be in force from and after July 1, 1988; provided, however, the increase in benefits allowed under this act shall apply only to claims arising on or after July 1, 1988.

"For claims arising prior to July 1, 1988, the following provisions of Section 71-3-25 (as it appeared prior to the amendment in 1988 and reenactment in 1990) shall apply:

"If the injury causes death, the compensation shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following:

"(a) An immediate lump sum payment of two hundred fifty dollars ($250.00) to the surviving spouse, in addition to other compensation benefits.

"(b) Reasonable funeral expenses not exceeding two thousand dollars ($2,000.00) exclusive of other burial insurance or benefits.

"(c) If there be a surviving spouse and no child of the deceased, to such surviving spouse thirty-five percent (35%) of the average wages of the deceased during widowhood or dependent widowhood and, if there be a surviving child or children of the deceased, the additional amount of ten percent (10%) of such wages for each such child. In case of the death or remarriage of such surviving spouse, any surviving child of the deceased employee shall have his compensation increased to fifteen percent (15%) of such wages, provided that the total amount payable shall in no case exceed sixty-six and two-thirds percent (66-⅔%) of such wages, subject to the maximum limitations as to weekly benefits as set up in this chapter. The commission may, in its discretion, require the appointment of a guardian for the purpose of receiving the compensation of a minor dependent. In the absence of such a requirement, the appointment of a guardian for such purposes shall not be necessary, provided that if no legal guardian be appointed, payment to the natural guardian shall be sufficient.

"(d) If there be a surviving child or children of the deceased but no surviving spouse, then for the support of each such child twenty-five percent (25%) of the wages of the deceased, provided that the aggregate shall in no case exceed sixty-six and two-thirds percent (66-⅔%) of such wages, subject to the maximum limitations as to weekly benefits as set up in this chapter.

"(e) If there be no surviving spouse or child, or if the amount payable to a surviving spouse and to children shall be less in the aggregate than sixty-six and two-thirds percent (66-⅔%) of the average wages of the deceased, subject to the maximum limitations as to weekly benefits as set up in this chapter, then for the support of grandchildren or brothers and sisters, if dependent upon the deceased at the time of the injury, fifteen percent (15%) of such wages for the support of each such person; and for the support of each parent or grandparent of the deceased, if dependent upon him at the time of injury, fifteen percent (15%) of such wages during such dependency. But in no case shall the aggregate amount payable under this subsection exceed the difference between sixty-six and two-thirds percent (66-⅔%) of such wages and the amount payable as hereinbefore provided to surviving spouse and for the support of surviving child or children, subject to the maximum limitations as to weekly benefits as set up in this chapter.

"(f) The total weekly compensation payments to any or all beneficiaries in death cases shall not exceed the weekly benefits as set up in this chapter and shall in no case be paid for a longer period than four hundred fifty (450) weeks or a greater amount than fifty-six thousand seven hundred dollars ($56,700.00) until June 30, 1985; as to claims arising on and after July 1, 1985, such payments shall not exceed fifty-nine thousand eight hundred fifty dollars ($59,850.00); and as to claims arising on and after July 1, 1986, such payments shall not exceed sixty-three thousand dollars ($63,000.00).

"(g) All questions of dependency shall be determined as of the time of the injury. A surviving spouse, child or children shall be presumed to be wholly dependent. All other dependents shall be considered on the basis of total or partial dependence as the facts may warrant."

Cross References — Minimum and maximum compensation, see § 71-3-13.

Determination of wages, see § 71-3-31.

JUDICIAL DECISIONS

1. In general.
2. Dependents, generally.
3. —Spouses.
4. —Children, stepchildren and grandchildren.
5. —Illegitimate children.
6. —Parents.
7. —Siblings.
8. —Partial dependents.
9. Effect of prior denial of compensation benefits.
10. Credit for other payments to deceased or dependents.
11. Application of recovery from third party wrongdoer.
12. Review.
13. Denial inappropriate.

1. In general.

Since a claim for disability is separate and distinct from a claim for death benefits, the 1960 amendment to subsection (9) of Code 1942, § 6998-02 [now subsection (i) of Code 1972, § 71-3-3], requiring that incapacity and the extent thereof be supported by medical findings, did not eliminate the presumption of causal connection between the employment and death occurring while the employee is engaged in the duties of his employment, particularly since the 1960 amendment did not affect subsection (3) of Code 1942, § 6998-02 [now subsection (c) of Code 1972, § 71-3-3]. L.B. Priester & Son v. Bynum's Dependents, 244 Miss. 196, 142 So. 2d 30 (1962), overruled on other grounds, Wilson v. Mississippi Emp. Sec. Comm'n, 643 So. 2d 538 (Miss. 1994).

Legislature did not purpose and intend to provide greater benefits for permanent partial disability than for death or permanent total disability, and the court in construing the Workmen's Compensation Law should give effect to the legislative purpose and policy although such construction may go beyond the letter of the law. J.F. Crowe Well Servicing Contractor v. Fielder, 224 Miss. 353, 80 So. 2d 29 (1955).

2. Dependents, generally.

Purposes and objectives of Workers' Compensation Act has rational basis and furthers valid state purpose, even though it precludes recovery by certain parties, such as non-dependants. Dependents of Nosser v. Natchez Jitney Jungle, Inc., 511 So. 2d 141 (Miss. 1987).

Where a lump sum settlement has been effected in compromise of a doubtful and disputed claim, the proceeds should be distributed among the widow and minor children of the deceased employee following the purpose of subdivision (c) of this section [Code 1942, § 6998-13]. Griffing v. Marquette Cement Mfg. Co., 253 Miss. 338, 175 So. 2d 180 (1965).

Where, in absence of an apportionment under Code 1942, § 6998-04 by reason of pre-existing disease, claimant would receive the statutory maximum, such maximum is the proper basis of apportionment. Southeastern Constr. Co. v. Dodson's Dependent, 247 Miss. 1, 153 So. 2d 276 (1963).

In order to be a dependent, the claimant must show that he had reasonable grounds to anticipate future support from the deceased employee. Mid-State Paving Co. v. Farthing, 233 Miss. 333, 101 So. 2d 850 (1958).

The provision of the Workmen's Compensation Law to the effect that questions of dependency shall be determined at the time of the injury has reference to the dependency which generates the original right to an award, and does not control the question of determination of a right to continue receiving an award. Franklin v. Jackson, 231 Miss. 497, 95 So. 2d 794 (1957).

3. —Spouses.

Provisions of former § 71-3-25 differentiating between widow and widower in award of death benefits are unconstitutional. Wilson v. Service Broadcasters, Inc., 483 So. 2d 1339 (Miss. 1986).

The provision giving a surviving wife a percentage of decedent's average wages is qualified by the provision of subsection (f) of Code 1942, § 6998-13; fixing the permissible maximum of payments. Southeastern Constr. Co. v. Dodson's Dependent, 247 Miss. 1, 153 So. 2d 276 (1963).

Unless disability of minority has been removed by court decree, a guardian should be appointed to receive compensation for a minor widow. Dapsco, Inc. v. Upchurch's Dependent, 243 Miss. 427, 138 So. 2d 287 (1962), overruled on other grounds, Banks v. Banks, 511 So. 2d 933 (Miss. 1987).

Lump sum settlement of compensation to widow set aside where widow had become ineligible to receive benefits by remarrying before payment, and had knowingly made a false statement as to necessity for lump sum payment. Dapsco, Inc. v. Upchurch's Dependent, 243 Miss. 427, 138 So. 2d 287 (1962), overruled on other grounds, Banks v. Banks, 511 So. 2d 933 (Miss. 1987).

A finding that the second wife of a deceased employee, as well as her children by a former marriage, were entitled to share in the death benefits resulting from the employee's death, was affirmed where there was evidence showing that the stepchildren were dependent upon the decedent for support, and that the wife and children were not living apart from the decedent without justifiable excuse. Bolton v. Easterling, 232 Miss. 236, 98 So. 2d 658 (1957).

The term widow or widower as contemplated in the Workmen's Compensation Law shall not apply to any person who has, since his or her separation from decedent, entered into a ceremonial marriage or lived in open adultery with another. Watkins v. Taylor, 216 Miss. 822, 63 So. 2d 225 (1953), motion granted, 216 Miss. 822, 65 So. 2d 461 (1953).

The words "surviving wife" as used in the Workmen's Compensation Law mean widow entitled to compensation, and where the wife of deceased has entered into marriage with another long prior to death of deceased, and lived with another man and was supported by him, each illegitimate child of deceased was entitled to compensation. Watkins v. Taylor, 216 Miss. 822, 63 So. 2d 225 (1953), motion granted, 216 Miss. 822, 65 So. 2d 461 (1953).

Where a man and woman lived together for three years and a child was born, but they did not hold themselves out as husband and wife, and both later separated and each of them contracted a ceremonial marriage, this was insufficient evidence to substantiate a common law marriage and the man's ceremonial marriage was valid, and the widow was entitled to compensation upon the death of her husband. United States Fid. & Guar. Co. v. Smith, 211 Miss. 573, 52 So. 2d 351 (1951).

In computing compensation benefits to a widow, the probability of remarriage before the expiration of the 450 weeks during which the widow is entitled to compensation must be taken into account. United States Fid. & Guar. Co. v. Smith, 211 Miss. 573, 52 So. 2d 351 (1951).

4. —Children, stepchildren and grandchildren.

Workers' Compensation Commission's decision that the child was not a dependent of the decedent and thus not entitled to an award of death benefits was supported by substantial evidence; because of the child's age (26-years old) and marital status (married), an award of death benefits to her would not be proper unless she was wholly dependent on the decedent, and given the myriad income sources available to and used by the child, the appellate court could hardly view the receipt of such income as sporadic or insubstantial. Descendants of Gilmer v. Nolen Sistrunk Trucking, Inc., 892 So. 2d 825 (Miss. Ct. App. 2004), cert. denied, 893 So. 2d 1061 (Miss. 2005).

Workers' Compensation Commission's decision that the decedent's grandchildren were not dependents and thus not entitled to death benefits was supported by substantial evidence, because there was no indication in the record that the grandchildren knew the decedent was providing support to them, much less that they expected his support in the future Descendants of Gilmer v. Nolen Sistrunk Trucking, Inc., 892 So. 2d 825 (Miss. Ct. App. 2004), cert. denied, 893 So. 2d 1061 (Miss. 2005).

Grandchild to whom deceased stood in place of parent for at least one year prior to injury elevated to child status, where uncontroverted evidence showed that decedent had stood in place of granddaughter's father all of her life, and she called him "Daddy." United States Rubber Reclaiming Co. v. Dependents of Stampley, 508 So. 2d 673 (Miss. 1987).

Under Miss Code 1972 §§ 71-3-3 & 71-3-25, which define a "child" and "grandchild" and prescribe different workmen's compensation benefits for each, two minor natural grandchildren, with whom the Commission found that decedent stood in loco parentis for at least one year prior to the time of his injury and death, would be elevated to the status of children for workmen's compensation benefit purposes. Longleaf Forest Prods., Inc. v. Hopkins, 349 So. 2d 523 (Miss. 1977).

Daughter unmarried at time of injury is ineligible for death benefits as a dependent where she was married at the time of death. Futorian-Stratford Furn. Co. v. Oswalt's Dependents, 249 Miss. 35, 162 So. 2d 645 (1964).

A married daughter, living apart from her husband and with the deceased at the time of his death, who was over the age of 18 years, not wholly dependent upon the deceased, and not incapable of self-support by reasons of mental or physical disability, was precluded from the allowance of any benefits for the death of her father. Thrash v. Jackson Auto Sales, Inc., 232 Miss. 845, 100 So. 2d 574 (1958).

Where there was evidence showing that the stepchildren were dependent upon decedent for support, and that the wife and stepchildren were not living apart from decedent without justifiable excuse, a finding that the second wife of a deceased employee, as well as her children by a former marriage, were entitled to share in the death benefits was affirmed. Bolton v. Easterling, 232 Miss. 236, 98 So. 2d 658 (1957).

Even though a child qualifies as a dependent as of the time of injury because he is then under 18 years of age, he ceases to be a child within the meaning of the Workmen's Compensation Law when he reaches the age of 18 years unless he is incapable of self-support by reason of mental or physical disability. Franklin v. Jackson, 231 Miss. 497, 95 So. 2d 794 (1957).

Since one of the primary purposes of the Workmen's Compensation Law is to relieve society of the burden of supporting helpless children in orphanages and public almshouses, it would be inconsistent with the primary purpose of that law to allow children over the age of 18 years, who are physically and mentally able to support themselves, to receive compensation and deplete the award to the detriment of younger children who, because of age, are unable to support themselves. Franklin v. Jackson, 231 Miss. 497, 95 So. 2d 794 (1957).

The provision that children under 18 are presumed to be dependent creates a rule of substantive law to the effect that a child under 18 years of age is conclusively presumed to be dependent. Anderson-Tully Co. v. Wilson, 221 Miss. 656, 74 So. 2d 735 (1954).

The time of employee's death is the critical date in determining whether his daughter was dependent upon him under the Workmen's Compensation Law. Accordingly, where a daughter of deceased employee was under 18 at the time of his death and married a month after his death and was supported by her husband afterwards, the compensation to the daughter would not be terminated as of the date of her marriage. Anderson-Tully Co. v. Wilson, 221 Miss. 656, 74 So. 2d 735 (1954).

5. —Illegitimate children.

Death benefits payable to dependent children under the Workmen's Compensation Law are not limited to benefits payable to the legitimate minor children of deceased. Stanley v. McLendon, 220 Miss. 192, 70 So. 2d 323 (1954).

Where wife of deceased has entered into marriage with another long prior to death of deceased and lived with another man and was supported by him, each illegitimate child of deceased was entitled to compensation. Watkins v. Taylor, 216 Miss. 822, 63 So. 2d 225 (1953), motion granted, 216 Miss. 822, 65 So. 2d 461 (1953).

6. —Parents.

Mother of decedent was not entitled to bring wrongful death action where decedent was killed when he was struck by car while working on highway project; contention that wrongful death statute controlled over Workers' Compensation provision which provided that it would be exclusive remedy was rejected; argument that because mother was not dependent on decedent, exclusive remedy provision in death benefit cases did not apply was also rejected, because act intended to provide exclusive remedy growing out of employer-employee relationship, and different result would subject employer in many instances to double liability. Estate of Morris v. W.E. Blain & Sons, 511 So. 2d 945 (Miss. 1987).

Mother, brothers, and sisters were entitled to Worker's Compensation death benefits as dependents of decedent, although decedent, who was 12 years of age when he died, had only been working for one and one-half days prior to fatal injury, because this was not first job he had held, and both decedent and his brothers and sisters gave money earned to mother for support of family; condition of dependency is fact determination to be made as of time of worker's death; and, term "dependent" must be liberally interpreted and includes those partially dependent as well as those wholly dependent. Sawyer v. Head, 510 So. 2d 472 (Miss. 1987).

The Workman's Compensation Commission's finding that the decedent's parents were partial dependents of the decedent at the time of his death was supported by substantial evidence, despite the fact that the parents enjoyed a substantial income from their employment. Union Camp, Inc. v. Dependents of McCall, 426 So. 2d 796 (Miss. 1983).

Where the average weekly wage of the deceased employee was $35.45, and the father and two minor brothers of the deceased employee were totally dependent upon him, the aggregate amount of weekly payments to the three dependents would be $15.96 and, after the father's death, the aggregate weekly payments to be made to the two minor brothers would be $10.64. Truck Trailer Sales & Serv. Co. v. Moore, 244 Miss. 317, 141 So. 2d 541 (1962).

Evidence that deceased employee had made cash contributions to his parents on numerous, although irregular occasions, had done the heavy manual work on their farm, and other than at times when he was working on construction projects, he had lived with his parents, except during a brief interval of an unsuccessful marriage, sustained the finding that the parents were partially dependent upon the employee, had reasonable grounds to anticipate continuing future support from him, and thus were dependents. Mid-State Paving Co. v. Farthing, 233 Miss. 333, 101 So. 2d 850 (1958).

7. —Siblings.

Mother, brothers, and sisters were entitled to Worker's Compensation death benefits as dependents of decedent, although decedent, who was 12 years of age when he died, had only been working for one and one-half days prior to fatal injury, because this was not first job he had held, and both decedent and his brothers and sisters gave money earned to mother for support of family; condition of dependency is fact determination to be made as of time of worker's death; and, term "dependent" must be liberally interpreted and includes those partially dependent as well as those wholly dependent. Sawyer v. Head, 510 So. 2d 472 (Miss. 1987).

Evidence was insufficient to support finding of dependency of sister of 12- year-old employee killed in course of employment, where at time of accident decedent had been living with father and stepmother while sister lived out of state with other relatives, though decedent gave money earned to his father and father sent money to relatives keeping sister, there was no evidence that decedent knew of disposition of his income, that decedent's earnings were used for sister's support, that sister had any reasonable expectation of receiving future money from decedent to be used for her support and maintenance and, under circumstances, expectancy of support by sister would be from her father, not her brother. Sawyer v. Head, 505 So. 2d 1199 (Miss. 1987).

Where the average weekly wage of the deceased employee was $35.45 and the father and two minor brothers of the deceased employee were totally dependent upon him, the aggregate amount of weekly payments to the three dependents would be $15.96 and, after the father's death, the aggregate weekly payments to be made to the two minor brothers would be $10.64. Truck Trailer Sales & Serv. Co. v. Moore, 244 Miss. 317, 141 So. 2d 541 (1962).

The commission's determination as to dependency of a brother will be affirmed if supported by substantial evidence. Ross v. Ross, 240 Miss. 84, 126 So. 2d 512 (1961).

A brother who, by reason of low intelligence and the loss of an arm, is incapable of holding a job and who received from the deceased employee regular monthly sums, without which he would have been destitute, may properly be found to have been entirely dependent upon him, though he earned a little money by sweeping a church and received occasional small gifts of money from another brother, who also paid a hospital bill. Ross v. Ross, 240 Miss. 84, 126 So. 2d 512 (1961).

8. —Partial dependents.

The term "dependent" must be liberally interpreted, and includes those partially dependent as well as those wholly dependent, and one is dependent if he relies upon the employee, in whole or in part, for his support. Mid-State Paving Co. v. Farthing, 233 Miss. 333, 101 So. 2d 850 (1958).

The legislature in drafting the Workmen's Compensation Law was well aware of the various kinds of compensation statutes, yet it failed to provide for any method of computing a reduced percentage of benefits for partial dependents, and the supreme court will not assume that the legislature intended to do so. Bradshaw v. Rudder, 227 Miss. 143, 85 So. 2d 778 (1956).

The 1950 amendment to Code 1942, § 6998-07, providing for a minimum weekly compensation of $10.00 "except in partial dependency cases," permits the payment to a dependent under this section [Code 1942, § 6998-13] of an amount less than the minimum, (a) where his statutory compensation is less than that amount, and (b) where such dependent is partially and not wholly dependent on the deceased employee; if he is wholly dependent, then the $10.00 applies. Bradshaw v. Rudder, 227 Miss. 143, 85 So. 2d 778 (1956).

The words in the latter part of this section [Code 1942, § 6998-13], that "all other dependents shall be considered on the basis of total or partial dependency as the facts may warrant," was intended to mean that such dependents shall be considered for the purpose of determining whether they are dependent on the basis of total or partial dependency as the facts may warrant, and the court should not insert after the verb "considered" the phrase "for the purpose of determining the amount of the award." and it was held that where surviving parents of deceased 18-year-old son were found to be partially dependent, they were entitled to 15% of his average weekly wage as provided by this section and not a percentage thereof estimated from the percentage of dependency. Bradshaw v. Rudder, 227 Miss. 143, 85 So. 2d 778 (1956).

9. Effect of prior denial of compensation benefits.

An adverse judgment on a decedent's prior claim for compensation, based upon an alleged heart attack arising out of his employment as a truck operator, was res judicata and a bar to a subsequent claim based upon the same episode of heart attack by the decedent's widow for compensation for herself and her minor daughter as dependents of the decedent. Knox Glass Co. v. Evans' Dependents, 246 So. 2d 89 (Miss. 1971).

An adverse decision on the merits of the claim of the employee while he was alive bars a dependency claim under the doctrine of res judicata, for the questions have already been fully litigated and all parties were involved, and necessarily so, in the manner in which the injury was received. Proctor v. Ingalls Shipbuilding Corp., 254 Miss. 907, 183 So. 2d 483 (1966).

10. Credit for other payments to deceased or dependents.

An employer who voluntarily procured life insurance on an employee was properly denied his request to have the proceeds of the life insurance credited as advance payment of compensation against workmen's compensation benefits he was required to pay, where the employer had not procured workmen's compensation insurance and did not qualify as a self-insurer. Hedgpeth v. Hair, 418 So. 2d 814 (Miss. 1982).

11. Application of recovery from third party wrongdoer.

When a recovery is made by a compensation beneficiary from a third-party wrongdoer, the balance of the proceeds remaining after the payment of the collection costs shall be used to discharge all the liability of the employer or insurer, including that to accrue in the future as well as that already paid or accrued, and includes any liability for death benefits that might accrue under the case. Richardson v. United States Fid. & Guar. Co., 233 Miss. 375, 102 So. 2d 368 (1958).

12. Review.

The time within which an award affirmed by the supreme court must be paid in order to avoid the statutory penalty runs from the time a suggestion of error was overruled, and not from the subsequent issue of the court's mandate. Decker v. Bryan Bros. Packing Co., 249 Miss. 6, 162 So. 2d 648 (1964).

Although the original award did not allow an immediate lump sum payment, nor reasonable funeral expenses, nor for compensation payments to the deceased prior to his death, where there had been no appeal by the claimants from the decision by the attorney-referee or the commission, their cross appeals could not be considered by the supreme court upon an appeal by the employer and his compensation carrier. Dixie Pine Prods. Co. v. Dependents of Bryant, 228 Miss. 595, 89 So. 2d 589 (1956).

The judgment of the lower court will be construed as giving effect to the statute which provides that the total amount payable shall in no case exceed 66⅔ per cent of such wages, subject to maximum limitations as to weekly benefits as set up in the Workmen's Compensation Law. Mississippi Federated Coops. v. Jefferson, 224 Miss. 150, 79 So. 2d 723 (1955).

13. Denial inappropriate.

Trial court erred when it affirmed the workers' compensation commission's denial of workers' compensation death benefits after an information systems manager was killed in car accident while returning to work from colleague's house after the plant had been evacuated because, she was fulfilling her duties within the period of her employment and was furthering the business of her employer. At the accident scene, it was discovered that the decedent had been in possession of some computer backup tapes and a laptop computer, and previously her supervisor had instructed the decedent to obtain all of the vital information that she could, including the tapes and the laptop computer, in the event of a plant evacuation. Duke ex rel. Duke v. Parker Hannifin Corp., 925 So. 2d 893 (Miss. Ct. App. 2005).

RESEARCH REFERENCES

Am Jur. 82 Am. Jur. 2d, Workers' Compensation §§ 163 et seq.

25 Am. Jur. Pl and Pr Forms (Rev), Workmen's Compensation, Forms 1 et seq.

11 Am. Jur. Proof of Facts 2d 423, Dependency of Child Who Has Attained Majority—Workers' Compensation.

CJS. 99 C.J.S., Workers' Compensation §§ 245-247 et seq., 598, 601 et seq.

Law Reviews. 1987 Mississippi Supreme Court Review, Workers' compensation. 57 Miss. L. J. 429, August, 1987.

Practice References. Bender's Labor and Employment Bulletin (Matthew Bender).

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Larson's Workers' Compensation Desk Edition (Matthew Bender).

Larson's Workers' Compensation Law (Matthew Bender).

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§ 71-3-27. Aliens.

Compensation under this chapter to aliens not residents (or about to become nonresidents) of the United States or Canada shall be in the same amount as provided for residents, except that dependents in any foreign country shall be limited to surviving wife and child or children or, if there be no surviving wife or child or children, to surviving father or mother whom the employee has supported, either wholly or in part, for the period of one (1) year prior to the date of the injury, and except that the commission may, at its option or upon the application of the insurance carrier, commute all future installments of compensation to be paid to such aliens by payment of a lump sum equal to the present value of all future payments of compensation computed at four percent (4%) discount compounded annually.

SOURCES: Codes, 1942, §§ 6998-13, 6998-14; Laws, 1948, ch. 354, §§ 9, 9h; Laws, 1950, ch. 412, § 7; Laws, 1958, ch. 454, § 4; Laws, 1968, ch. 559, § 7; reenacted without change, Laws, 1982, ch. 473, § 14; reenacted without change, Laws, 1990, ch. 405, § 14, eff from and after July 1, 1990.

RESEARCH REFERENCES

ALR. Application of workers' compensation laws to illegal aliens. 121 A.L.R.5th 523.

Am Jur. 82 Am. Jur. 2d, Workers' Compensation § 185.

CJS. 99 C.J.S., Workers' Compensation § 283.

§ 71-3-29. Compromise, commutation, and lump sum payments.

Rules of the commission shall govern compromise payments where the prescribed schedules are not applicable and which, in its discretion, may be made in cases where it is not possible to determine the exact extent of disability, as for example in certain injuries to the back or head. The commission shall also have full authority to adjudicate the disposition of death claims. Commutation and lump sum settlement payments shall be governed by rules of the commission, and shall not be made except when determined to be in the best interest of the injured worker or his dependents, the commission having final authority in such questions.

SOURCES: Codes, 1942, §§ 6998-13, 6998-15; Laws, 1948, ch. 354, §§ 9, 9i; Laws, 1950, ch. 412, § 7; Laws, 1958, ch. 454, § 4; Laws, 1968, ch. 559, § 7; reenacted without change, Laws, 1982, ch. 473, § 15; reenacted without change, Laws, 1990, ch. 405, § 15, eff from and after July 1, 1990.

Cross References — Structured settlements, generally, see §§ 11-57-1 et seq.
Determination of wages, see § 71-3-31.

JUDICIAL DECISIONS

1. In general.

In a workmen's compensation case arising out of a compromise settlement for a lump-sum payment made by an injured worker, the trial court properly reinstated an order of the administrative judge to reopen the cause with further proceedings to determine benefits where the employee, who possessed a fourth-grade education and was unable to read or write except to sign his name, had never been informed of the full extent of his disability, had not been represented by counsel during the settlement negotiations, had not been told the full amount of disability benefits to which he was entitled, and, generally, had been taken unfair advantage of by the carrier. Bailey Lumber Co. v. Mason, 401 So. 2d 696 (Miss. 1981).

Workmen's compensation commission order approving settlement of disputed compensation claim between employee and employer-carrier pursuant to Code 1972, § 71-3-29 and authorizing execution of any document required by employer-carrier "to evidence their release, acquittal and discharge herein," did not impliedly sanction the release of the employee's third-party rights, and the release so authorized could not validly effect any rights the employee might have against third parties. Hague v. Liberty Mut. Ins. Co., 504 F.2d 364 (5th Cir. 1974).

Where a claim is doubtful, disputed, and not readily collectible, and the proposed amount of a compromise settlement is fair and reasonable, and it is for the best interest of the claimants that a settlement with commutation and a lump sum payment be accepted, such a compromise will be authorized by the court. Griffing v. Marquette Cement Mfg. Co., 253 Miss. 338, 175 So. 2d 180 (1965).

A commuted lump-sum payment of voluntary compensation does not preclude reopening the case for a redetermination of the extent of disability. Armstrong Tire & Rubber Co. v. Franks, 242 Miss. 792, 137 So. 2d 141 (1962).

A minor widow is not capable of contracting for a lump-sum settlement. Dapsco, Inc. v. Upchurch's Dependent, 243 Miss. 427, 138 So. 2d 287 (1962), overruled on other grounds, Banks v. Banks, 511 So. 2d 933 (Miss. 1987).

Lump-sum settlement of compensation to widow set aside where widow had become ineligible to receive benefits by remarrying before payment, and had knowingly made a false statement as to necessity for lump-sum payment. Dapsco, Inc. v. Upchurch's Dependent, 243 Miss. 427, 138 So. 2d 287 (1962), overruled on other grounds, Banks v. Banks, 511 So. 2d 933 (Miss. 1987).

The commission may properly refuse to set aside a compromise settlement of a claim known by claimant to be a doubtful one, one in which it was not possible to ascertain the extent of disability. Dixon v. Green, 240 Miss. 204, 127 So. 2d 662 (1961).

RESEARCH REFERENCES

ALR. Validity, construction, and effect of statutory exemptions of proceeds of workers' compensation awards. 48 A.L.R.5th 473.

Am Jur. 82 Am. Jur. 2d, Workmen's Compensation § 613.

25 Am. Jur. Pl and Pr Forms (Rev), Workmen's Compensation, Forms 1 et seq.

CJS. 99 C.J.S., Workers' Compensation §§ 624 et seq.

Law Reviews. 1981 Mississippi Supreme Court Review: Administrative Law. 52 Miss. L. J. 377, June 1982.

§ 71-3-31. Determination of wages.

Except as otherwise specifically provided, the basis for compensation under this chapter shall be the average weekly wages earned by the employee at the time of the injury, such wages to be determined from the earnings of the injured employee in the employment in which he was working at the time of the injury during the period of fifty-two (52) weeks immediately preceding the date of the injury divided by fifty-two (52); but if the injured employee lost more than seven (7) days during such period, although not in the same week, then the earnings for the remainder of such fifty-two (52) weeks shall be divided by the number of weeks remaining after the time so lost has been deducted. When the employment prior to the injury extended over a period of less than fifty-two (52) weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed, provided that results just and fair to both parties will thereby be obtained. Where, by reason of the shortness of time during which the employee has been in the employment of his employer, it is impracticable to compute the average weekly wages by the above method of computation, regard shall be had to the average weekly amount which, during the first fifty-two (52) weeks prior to the injury or death, was being earned by a person in the same grade, employed at the same or similar work in the community. Wherever allowances of any character are made to an employee in lieu of wages or specified as part of the wage contract, they shall be deemed a part of his earnings.

SOURCES: Codes, 1942, § 6998-16; Laws, 1948, ch. 354, § 10; reenacted without change, Laws, 1982, ch. 473, § 16; reenacted without change, Laws, 1990, ch. 405, § 16, eff from and after July 1, 1990.

Cross References — Determination of wages for survivors insurance for state employees, see § 25-11-5.

Determination of wages for unemployment compensation, see § 71-5-11.

JUDICIAL DECISIONS

1. In general.
2. Employed 52 weeks prior to injury.
3. Employed less than 52 weeks prior to injury.
4. Employees in same grade.

1. In general.

Nothing prevented the inclusion of all wages from the same employer in determining average weekly wage for an injured employer, and whether the other position in which a claimant was not engaged at the moment of injury was one in which the claimant should be considered as being contemporaneously employed needs to be determined as a matter of fact; the combined total of the employee's wages had to reflect the earnings from the same employer for the 52-week period prior to injury and were subject to Miss. Code Ann. § 71-3-31. Piney Woods Country Life Sch. v. Young, 946 So. 2d 805 (Miss. Ct. App. 2006), writ of certiorari denied by 947 So. 2d 960, 2007 Miss. LEXIS 58 (Miss. 2007).

The claimant's injury as a result of a 1981 accident was not to be compensated at his average weekly wage in 1981, the time of his accident, but at his average weekly wage in 1993, the date he was declared permanently disabled where (1) he underwent two spinal surgeries to correct damage done as a result of his accident in 1981, (2) he returned to work after the first surgery and continued to work up until 1993, a period of over 11 years, (3) between the 1981 accident and the ultimate end of his employment in 1993, he received promotions and salary increases for his service to his employer, and (4) during this time, his condition gradually and progressively deteriorated to the point that in 1993 he was declared permanently disabled and unable to continue working for his employer. J. H. Moon & Sons Inc. v. Johnson, — So. 2d —, 1999 Miss. App. LEXIS 12 (Miss. Ct. App. Jan. 26, 1999), affirmed by 753 So. 2d 445, 1999 Miss. LEXIS 383 (Miss. 1999).

Where claimant suffered a single injury in 1981 and the injury gradually worsened and progressed to a permanent injury which manifested itself as a total disability in July 1993, the rate of compensation should be based on Johnson's salary and/or wages for July 1993. J.H. Moon & Sons v. Johnson, 753 So. 2d 445 (Miss. 1999).

Worker who originally intends to return to work full time after birth of child but who only returns to work part time due to complications arising from birth should have worker's compensation benefits computed on basis of pay as part-time employee. Wilson v. Service Broadcasters, Inc., 483 So. 2d 1339 (Miss. 1986).

Where there was error in determining a worker's average weekly wage, the claim would be remanded to correct the inherent error in the amount of disability compensation awarded. Singer Co. v. Smith, 362 So. 2d 590 (Miss. 1978).

A claim for worker's compensation was not barred by the statute of limitations where it was virtually impossible for the claimant to have known at the time of the apparently minor accident, then noncompensable, that it would develop into a compensable injury; being a latent injury case, the average weekly wage was properly determined from the date of the resultant disabling injury and not from the date of the accident. Pepsi Cola Bottling Co. v. Long, 362 So. 2d 182 (Miss. 1978).

While the basis of the claimant's weekly wage was not dogmatically stated, it was sufficient to enable the commission, in conjunction with the provisions of this section [Code 1942, § 6998-16], to justify the determination of a fair and just wage and award of benefits on that basis. White Top & Safeway Cab Co. v. Wright, 251 Miss. 830, 171 So. 2d 510 (1965).

Where the finding of the workmen's compensation commission was favorable to claimant as to his average weekly wage, and was not manifestly wrong under conflicting evidence, the finding was sustained. Prince v. Nicholson, 229 Miss. 718, 91 So. 2d 734 (1957).

2. Employed 52 weeks prior to injury.

In determining the average weekly wage of an employee, who had been employed on an 8-hour, 5-day-week basis, was not paid when he did not work, and during the 52 weeks immediately prior to his death had lost 66 days, the proper procedure was to divide the 66 days lost by five, the work week, which would equal 13.2 weeks lost in the 52-week period, subtract 13.2 from 52, and divide the total earning for the period by 38.8. Dependents of Harris v. Suggs, 233 Miss. 533, 102 So. 2d 696 (1958).

3. Employed less than 52 weeks prior to injury.

Measure of preinjury earnings of workman's compensation claimant hired as temporary material handler who is injured after working only 4 days is wage rate for temporary handlers, not rate for permanent handlers where finding that, but for injury, claimant would have been promoted to permanent handler would be speculative. Hall of Mississippi, Inc. v. Green, 467 So. 2d 935 (Miss. 1985).

For purposes of computing workmen's compensation benefits for a volunteer fireman who had suffered a 25 per cent partial disability of his whole body as a result of an injury sustained in the course of fighting a fire, his average weekly wage would be determined by dividing his total wage of $35.00 by nine, the number of weeks or parts thereof that he had worked, and not by combining his wages as a volunteer fireman with those of his regular employment nor by reference to the average weekly wages for a full-time fireman in the surrounding area. Sullivan v. City of Okolona, 370 So. 2d 921 (Miss. 1979).

Where a claimant began to work 4 weeks preceding the date of injury and had worked 3 days the 1st week, 2 days during the 2nd week and 3 days during each of the next 2 weeks, and her total earnings amounted to $51.28, she should have been awarded compensation in amount of $10 per week rather than an award based on an average weekly wage of $25. Pepper v. Barrett, 225 Miss. 30, 82 So. 2d 580 (1955).

4. Employees in same grade.

Where a claimant began work in the middle of a work week, and received his injury on the second day of the next work week, so as to be prevented from working 40 hours during the second work week, it was proper to determine claimant's compensation upon the basis of the average weekly wage of other employees in the same grade, and doing the same work, as claimant. B.C. Rogers & Sons v. Reeves, 232 Miss. 309, 98 So. 2d 875 (1957).

RESEARCH REFERENCES

Am Jur. 82 Am. Jur. 2d, Workers' Compensation §§ 349 et seq.

CJS. 99 C.J.S., Workmen's Compensation §§ 521-524, 542, 543 et seq.

Law Reviews. 1979 Mississippi Supreme Court Review: Administrative Law. 50 Miss. L. J. 699, December 1979.

§ 71-3-33. Guardian for minor or incompetent.

The commission may require the appointment by a court of competent jurisdiction, for any person who is mentally incompetent or a minor, of a guardian or other representative to receive compensation payable to such person under this chapter and to exercise the powers granted to or to perform the duties required of such person under this chapter.

SOURCES: Codes, 1942, § 6998-17; Laws, 1948, ch. 354, § 11; reenacted without change, Laws, 1982, ch. 473, § 17; reenacted without change, Laws, 1990, ch. 405, § 17, eff from and after July 1, 1990.

Cross References — Appointment of guardian by the court, see §§ 93-13-15 et seq.

JUDICIAL DECISIONS

1. In general.

Unless disability of minority has been removed by court decree, a guardian should be appointed to receive compensation for a minor widow. Dapsco, Inc. v. Upchurch's Dependent, 243 Miss. 427, 138 So. 2d 287 (1962), overruled on other grounds, Banks v. Banks, 511 So. 2d 933 (Miss. 1987).

RESEARCH REFERENCES

Am Jur. 82 Am. Jur. 2d, Workers' Compensation § 498.

CJS. 100 C.J.S., Workmen's Compensation §§ 814-817.

§ 71-3-35. Limitation.

(1) No claim for compensation shall be maintained unless, within thirty (30) days after the occurrence of the injury, actual notice was received by the employer or by an officer, manager, or designated representative of an employer. If no representative has been designated by posters placed in one or more conspicuous places, then notice received by any superior shall be sufficient. Absence of notice shall not bar recovery if it is found that the employer had knowledge of the injury and was not prejudiced by the employee's failure to give notice. Regardless of whether notice was received, if no payment of compensation (other than medical treatment or burial expense) is made and no application for benefits filed with the commission within two (2) years from the date of the injury or death, the right to compensation therefor shall be barred.

(2) If a person who is entitled to compensation under this chapter is mentally incompetent or a minor, the limitation for filing application for benefits shall not be applicable so long as such person has no guardian or other authorized representative, but shall be applicable in the case of a person who is mentally incompetent or a minor from the date of appointment of such guardian or other representative, or in the case of a minor, if no guardian is appointed before he becomes of age, from the date he becomes of age.

(3) Where recovery is denied to any person, in a suit brought at law or admiralty to recover damages in respect of injury or death, on the ground that such person was an employee and that the defendant was an employer within the meaning of this chapter and that such employer had secured compensation to such employee under this chapter, the limitation upon filing application for benefits shall begin to run only from the date of termination of such suit.

SOURCES: Codes, 1942, § 6998-18; Laws, 1948, ch. 354, § 12; reenacted without change, Laws, 1982, ch. 473, § 18; reenacted without change, Laws, 1990, ch. 405, § 18, eff from and after July 1, 1990.

Cross References — Effect of infancy or incompetency upon limitations of actions generally, see § 15-1-59.

Provision of medical services and supplies, see § 71-3-15.

Provision that the first installment of compensation shall become due on the fourteenth day after the employer has notice, under this section, of the injury or death, see § 71-3-37.

JUDICIAL DECISIONS

1. In general.
2. When period commences.
3. Effect of knowledge of superiors and co-workers.
4. Statutory bar, generally.
5. —Medical benefits.
6. —Injury in another state.
7. —Latent injury.
8. —Death.
9. Pleading and practice.
10. Estoppel.

1. In general.

Continued payment of an injured employee's salary constituted payments made in lieu of workers' compensation benefits, and these payments thus tolled the statute of limitations for workers' compensation claims, because the employee could not have continued to "earn" his wages while he was absent from work for more than sixteen weeks. Parchman v. Amwood Prods., 988 So. 2d 346 (Miss. 2008).

Where the claimant received benefits for about three weeks after her accident, the statute of limitations applied, rather than that in subsection (1) of this section. Taylor v. Salvation Army-Pascagoula Corps, 744 So. 2d 825 (Miss. Ct. App. 1999).

Under Mississippi law, carrier which provided workers' compensation insurance both to claimant's employer and claimant's alleged borrowing employer had no legitimate or arguable reason to initially deny benefits, and thus was liable for bad faith denial, notwithstanding its arguments that it had independent legitimate reasons, including dispute over whether each insured was claimant's employer, not to pay under either policy; such reasons were irrelevant given that statutory requirements were met such that carrier had obligation to promptly pay benefits regardless of which of its insureds was claimant's employer. Rogers v. Hartford Acc. & Indem. Co., 133 F.3d 309 (5th Cir. 1998).

Claim decided adversely to asbestosis claimant under the Longshoremen's and Harbor Workers' Compensation Act was res judicata on claim under Mississippi Workers' Compensation, as every factual issue under the Mississippi Act, including the issue of notice to the employer, was litigated and decided adversely to claimant in the Longshoremen's Act proceedings. Ingalls Shipbuilding Div., Litton Sys. v. Parson, 495 So. 2d 461 (Miss. 1986).

Fact that claimant for disability benefits does not report injury until 4 days after it occurs neither proves that disability must have been caused by something other than injury in course of employment nor bars claim as untimely, notwithstanding employer's policy requiring that workers report injuries immediately. South Cent. Bell Tel. Co. v. Aden, 474 So. 2d 584 (Miss. 1985).

In workman's compensation action the two-year statute of limitations § 71-3-35(1) had no application to the action, where compensation benefits were paid to the claimant. City of Kosciusko v. Graham, 419 So. 2d 1005 (Miss. 1982).

Unless prejudice results, the failure to give actual notice within 30 days after the occurrence of the accident does not bar a claim. Davis v. Clark-Burt Roofing Co., 238 Miss. 464, 119 So. 2d 926 (1960).

The law looks with disfavor on strained and technical interpretations of statutes regarding notice of injury, and even in cases where no timely notice was given, the tendency is to temper the literal harshness of statutory bars by the recognition of various excuses and permitting waivers and exceptions. Port Gibson Veneer & Box Co. v. Brown, 226 Miss. 127, 83 So. 2d 757 (1955).

2. When period commences.

Employee's workers' compensation claim was barred because she was aware of the existence and appreciated the extent and nature of her injury as a result of the 1999 fall immediately post-injury; even if she did not fully recognize the nature, seriousness, and probable compensable character of her injury in 1999, she did so at the latest on May 18, 2004, when a doctor diagnosed her with a brain stem contusion. Therefore, her petition to controvert filed on August 2, 2006, was time-barred by the two-year statute of limitations. Murray v. Ingalls Shipbuilding/NGSS, 35 So. 3d 561 (Miss. Ct. App. 2010).

Trial court properly upheld the denial of a claim for workers' compensation benefits because the employee failed to file a workers' compensation claim within two years of being diagnosed with carpal tunnel syndrome; the employee's claim was thus barred by the two-year statute of limitations, Miss. Code Ann. § 71-3-35(1) Shipp v. Thomas & Betts & Ace Am. Ins. Co., 13 So. 3d 332 (Miss. Ct. App. 2009), writ of certiorari denied by 14 So. 3d 731, 2009 Miss. LEXIS 359 (Miss. 2009).

Employee first sought treatment for allergies she alleged were related to her workplace two years after she testified that her respiratory problems had started; the appellate court noted that it was obvious that the employee suffered for years, and she was hospitalized eight times in three years, but the claim was not filed until more than three years after she knew her illnesses were related to the work place, so it was time-barred. Cooper v. Miss. Dep't of Rehab. Servs., 937 So. 2d 51 (Miss. Ct. App. 2006).

Two-year statute of limitations began to run in October 1995, when employee retired due to his gradually worsening hearing loss, rather than in 1998, when a specialist confirmed that his hearing had deteriorated even further. The employee had reasonably discovered the nature, seriousness, and probable compensable nature of his injury at the time of his retirement, and the record was also clear that he became aware of the cause of his hearing loss as early as 1993; his injury was not a "latent injury, and his claim filed in November 1999, was barred by the two-year limitation period set forth in Miss. Code Ann. § 71-3-35. Boykin v. Sanderson Farms, Inc., 910 So. 2d 52 (Miss. Ct. App. 2005).

Because there was no finding as to when an employee knew or should have known that the employee's carpal tunnel syndrome was a compensable injury, it was unclear whether the claim was barred under Miss. Code Ann. § 71-3-35; the matter was remanded for further findings of fact on this issue. Howard Indus. v. Robinson, 846 So. 2d 245 (Miss. Ct. App. 2002).

Worker's claim for workers' compensation benefits was barred by the two-year statute of limitation contained in Miss. Code Ann. § 71-3-35 where the worker did not lose any work as a result of the injury, did not receive either disability income benefits or nonburial death benefits, and did not file her claim for benefits within two years of the injury. Jordan v. Pace Head Start, 852 So. 2d 28 (Miss. Ct. App. 2002).

Substantial evidence supported the commission's determination that the claimant invoked her right to disability benefits within two years after she discovered or reasonably should have discovered the work related nature of her carpal tunnel syndrome. Lucas v. Angelica Uniform Group, 733 So. 2d 285 (Miss. 1998).

The Workers' Compensation statute of limitations begins to run when the claimant is or reasonably should be aware of having sustained a compensable injury, but the statute is deemed not to have begun to run if the claimant's reasonably diligent efforts to obtain treatment yield no medical confirmation of a compensable injury. Thus, the statute of limitations could not be invoked by an employer, even though the claimant did not file a motion to controvert until over 2 years after the accident, where the claimant clearly knew that he had been injured in an accident, but he did not discover the compensable nature of his injuries until over a year after the accident because his physicians remained unaware of the compensable nature of his injuries until that time. Georgia-Pacific Corp. v. Taplin, 586 So. 2d 823 (Miss. 1991).

The two-year statute of limitations on an employee's claim for workmen's compensation benefits began to run when he left his employment on a four-month sick leave in 1973, where he knew or should have known the nature, seriousness and disabling character of hypertension, from which he had suffered for several years, and where his testimony established that he had actual knowledge of his disability and that it had been caused by a work-connected aggravation of hypertension. Quaker Oats Co. v. Miller, 370 So. 2d 1363 (Miss. 1979).

Mental competency vel non determines the running or tolling or the worker's compensation statute. Shippers Express v. Chapman, 364 So. 2d 1097 (Miss. 1978).

A defendant who has successfully defended an action for personal injuries resulting from a beating the plaintiff received from defendant's foreman, on the ground that the relationship of employer-employee existed between defendant and plaintiff, cannot thereafter challenge the applicability of the Workmen's Compensation Law to the plaintiff's claim; provided claim for benefits is timely filed within the time extended by Code 1942, § 6998-18(c) beginning with the date of the order dismissing plaintiff's appeal. Seal v. Industrial Elec., Inc., 395 F.2d 214 (5th Cir. 1968).

Notice is not required until there is a disability where the injury is progressive and cannot with reasonable certainty be recognized at first as compensable. Pope

Co. v. Wells, 230 Miss. 199, 92 So. 2d 370 (1957).

Where a claimant on October 15, 1954, who, while in the course and scope of his employment, became exposed to cement dust, which aggravated an existing chronic eczema, continued his employment until March 14, 1955, when he was found to be totally disabled, and then immediately gave notice to his employer, the employer was not prejudiced by the failure of the claimant to give an earlier notice. Pope Co. v. Wells, 230 Miss. 199, 92 So. 2d 370 (1957).

3. Effect of knowledge of superiors and co-workers.

Under Mississippi law, when employer has knowledge of workers' compensation claimant's injury, formal notice to employer of occurrence of injury is not needed to trigger carrier's obligation to provide benefits, and this knowledge is imputed to carrier without any formal notification to carrier. Rogers v. Hartford Acc. & Indem. Co., 133 F.3d 309 (5th Cir. 1998).

Where the employer had knowledge of an employee's bulge or herniated disc, although not necessarily knowledge that the injury was work connected, and the employer did not show that it was prejudiced by the employee's failure to notify the employer, the employer had adequate notice. Central Elec. & Mach. Co. v. Shelton, 220 So. 2d 320 (Miss. 1969).

Where employers' foreman knew of the claimant's injury on the day that it occurred, there was no evidence that the employer was prejudiced by the late filing of the claim, and the commission found that neither the employee nor his wife knew that his injury was compensable until they consulted an attorney, there was no error in awarding compensation. Walker Mfg. Co. v. Pickens, 206 So. 2d 639 (Miss. 1968).

In view of the fact that the claim was filed with the commission within about two months after the date of injury and the evidence supported a finding that, although the claimant did not inform his foreman as to the circumstances attendant upon it, he had given notice to the foreman within several days after the occurrence of his injury, the commission was warranted in concluding that no prejudice had resulted and that an award should be made. Davis v. Clark-Burt Roofing Co., 238 Miss. 464, 119 So. 2d 926 (1960).

Knowledge of accident by superintendent of part of mill in which injured employee worked is sufficient notice to the employer, where no representative has been designated by the employer to whom notice of injury should be given. Teague v. Graning Hardwood Mfg. Co., 238 Miss. 48, 117 So. 2d 342 (1960).

Failure to notify employer of injury does not preclude compensation where employer knew of accident a few minutes after it happened and conducted an investigation. Bush v. Byrd's Dependents, 234 Miss. 782, 108 So. 2d 211 (1959).

Where a record showed that the claimant had notified one of his superiors of his injury, the employer's contention that the claimant had failed to give notice of his injury as required by this section [Code 1942, § 6998-18] was rejected. Houston Contracting Co. v. Reed, 231 Miss. 213, 95 So. 2d 231 (1957).

Where the claimant, who on September 28th, 1953, sustained injury arising out of the course of her employment, had notified the floor supervisor of her injury, but received no disability payments, the claimant being ignorant of the fact she was entitled thereto, a claim for compensation filed on September 21, 1955, was timely. Pascagoula Crab Co. v. Holbrooks, 230 Miss. 833, 94 So. 2d 233 (1957).

Where it was undisputed that within a few days after both heart attacks suffered by the claimant he was visited in the hospital by his coworkers, including his foreman, and further that he was treated in the first aid station maintained by the employer for the benefit of injured employees and was transported by the employer's ambulance to the hospital and from the hospital home, the employer had knowledge of the claimant's injury and of the fact that it was suffered in the course of his employment and related to his work, and was not prejudiced by the claimant's failure to give notice. Ingalls Shipbuilding Corp. v. Dickerson, 230 Miss. 110, 92 So. 2d 354 (1957).

The fact that there was an existence of a close personal and family relationship between the injured employee and his foreman was not in itself a sufficient circumstance to render nugatory notice received by such foreman. Port Gibson Veneer & Box Co. v. Brown, 226 Miss. 127, 83 So. 2d 757 (1955).

Under this section [Code 1942, § 6998-18] notice to any superior of employee is sufficient notice. Port Gibson Veneer & Box Co. v. Brown, 226 Miss. 127, 83 So. 2d 757 (1955).

Where an employee suffered a heart attack while at work and his foreman drove him to a hospital, and there was no showing whatsoever that the employer was prejudiced by failure of a claimant to give notice in the manner contemplated by the statute, the employer cannot complain that he had received no actual notice of the claim nor could the employer argue that the claim was barred by this section [Code 1942, § 6998-18]. Pearl River Tung Co. v. John's Estate, 225 Miss. 303, 83 So. 2d 95 (1955).

4. Statutory bar, generally.

Two-year statute of limitations will not begin to run until by reasonable care and diligence it is discoverable and apparent that a compensable injury has been sustained; the statute is not deemed to have begun running if the claimant's reasonably diligent efforts to obtain treatment yield no medical confirmation of compensable injury. Mississippi law does not penalize workers when they, with their physicians' assistance, cannot confirm that their injuries are compensable. Miss. State Univ. v. Panuska, 20 So. 3d 717 (Miss. Ct. App. 2009).

Claimant's application for workers' compensation benefits was properly dismissed as untimely under Miss. Code Ann. § 71-3-35(1) because there was no evidence that the employer paid the claimant wages in lieu of benefits to toll the two-year limitations period and there was no evidence that the employer thought that the claimant had a work-related injury. Bynum v. Anderson Tully Lumber Co., 996 So. 2d 814 (Miss. Ct. App. 2008).

Claimant's petition to controvert, which was filed in June 2005 for an August 1994 work-related injury to his hips, was time-barred under the two-year statute of limitations, Miss. Code Ann. § 71-3-35(1), because the injury was not latent and because the claimant reasonably should have known that he had a compensable injury from the diagnosis of avascular necrosis in 1996. James v. Bowater Newsprint & Travelers Ins. Co., 983 So. 2d 355 (Miss. Ct. App. 2008).

Where an employer voluntarily paid for an employee's work-related medical expenses for two years, the two-year statute of limitations barred the employee's petition to controvert because the employee failed to show that the statute of limitations was tolled based on arguments regarding the employer's voluntary payment of medical benefits, wages in lieu of compensation, a latent or progressive injury, and equitable estoppel. Baker v. IGA Super Valu Food Store, 990 So. 2d 254 (Miss. Ct. App. 2008), writ of certiorari denied en banc by 994 So. 2d 186, 2008 Miss. LEXIS 458 (Miss. 2008).

Dismissal of the employee's petition to controvert was proper under Miss. Code Ann. § 71-3-35 because the claim was barred by the statute of limitations since the employee received no benefits of any kind within the two-year period following his injury; he chose to use his wife's medical insurance to pay for his treatment. Parchman v. Amwood Prods., Inc., 988 So. 2d 380 (Miss. Ct. App. 2007), reversed by, remanded by 988 So. 2d 346, 2008 Miss. LEXIS 303 (Miss. 2008).

Record supported the Mississippi Workers' Compensation Commission's finding that an employee had filed her claim for workers' compensation benefits more than two years after she became aware that she was allergic to tobacco smoke and had experienced adverse effects from exposure to tobacco smoke in the workplace; the appellate court reversed the second trial court's order overturning the Commission's decision denying the employee's claim for benefits. Univ. of S. Miss. v. Gillis, 872 So. 2d 60 (Miss. Ct. App. 2003), cert. denied, 873 So. 2d 1032 (Miss. 2004).

Differences in the numbers on the two B-31 Forms were mere corrections of the amount actually paid, and no additional benefits were furnished to the claimant after his settlement; the filing of a B-31 Form containing errors as to the amount of the benefits paid was sufficient to begin the running of the statute of limitations and the filing of a corrected form did not interrupt the limitations period, even if it was without notice to the claimant. McCrimon v. Red Arrow Car Wash, 859 So. 2d 395 (Miss. Ct. App. 2003).

The defendant city would not be equitably estopped from asserting the two-year time bar on the basis that city officials allegedly represented to the claimant that the city would file his claim with the Workers' Compensation Commission on his behalf; reliance on such a statement to sink into inactivity for a period of two years could not be deemed reasonable or justifiable. McCrary v. City of Biloxi, — So. 2d —, 1999 Miss. App. LEXIS 155 (Miss. Ct. App. Apr. 6, 1999), reversed by, remanded by 757 So. 2d 978, 2000 Miss. LEXIS 29 (Miss. 2000).

Employer was estopped from claiming that two-year statute of limitations on workers' compensation claim was not tolled, where employer failed to timely file statutorily-required notice of fatal termination of injury. Holbrook ex rel. Holbrook v. Albright Mobile Homes, Inc., 703 So. 2d 842 (Miss. 1997).

Issues of material fact existed as to whether employer had workers' compensation coverage, whether employer misled employee's survivors into believing no coverage existed, and whether survivors relied on any misleading statements, precluding summary judgment as to whether statute of limitations on workers' compensation claim should be tolled based on alleged misrepresentations by employer. Holbrook ex rel. Holbrook v. Albright Mobile Homes, Inc., 703 So. 2d 842 (Miss. 1997).

Even if an employer had misrepresented to a claimant that he had no insurance, the employer and its insurance carrier would not be estopped from pleading the 2-year statute of limitations where the evidence established that the claimant was aware of the falsity of that representation and did not rely on it, and was aware of her rights before the expiration of the limitation period. Layton v. State, 246 So. 2d 534 (Miss. 1971).

The fact that a claimant did not process his claim, if he had one, does not suspend the running of the two-year statute of limitations. Taylor v. Crosby Forest Prods. Co., 198 So. 2d 809 (Miss. 1967).

Where there was positive evidence from the only heart specialist who had treated claimant over a 4-year period that he might have been disabled without any work activity at all, and the only episode in the record which could indicate that claimant sustained a work-connected injury occurred more than 2 years prior to the date on which he filed a claim, compensation was properly denied. Knox Glass, Inc. v. Evans, 197 So. 2d 784 (Miss. 1967).

Where there is substantial evidence to support the finding that the claimant's injury occurred more than two years prior to the date on which claim for compensation was filed, and the evidence that the employer knew of the claimant's condition is vague and inconclusive, the claim is properly barred by limitations. Childs v. Mississippi Indus. for Blind, 184 So. 2d 872 (Miss. 1966).

Where claimant, injured on Jan. 15, 1960, signed final settlement report filed on Feb. 18, 1960, and filed claim for same injury on Mar. 20, 1961, and subsequently on Oct. 31, 1962 amended his claim to include injuries occurring on May 1, 1960, question of whether amendment related back to date of filing original claim so as to take it out of 1-year and 2-year limitations periods depended upon whether later injury was a new injury or further disability for previous injury, and this was a question of fact to be determined by commission. Yazoo Mfg. Co. v. Schaffer, 254 Miss. 35, 179 So. 2d 784 (1965).

Claimant was not entitled to compensation where his claim therefor was filed more than two years from the date of injury, and medical testimony supported the finding of the workmen's compensation commission that the employee's work activities had not contributed to his condition. Modern Laundry v. Harrell, 246 Miss. 463, 150 So. 2d 409 (1963).

The right to compensation was barred where the claimant failed to file for benefits until more than two years from the date of injury. Modern Laundry v. Harrell, 246 Miss. 463, 150 So. 2d 409 (1963).

It is immaterial that a claim for compensation was not filed until after settlement of a suit against a third party tortfeasor, if the application was made within two years of injury. Bush v. Byrd's Dependents, 234 Miss. 782, 108 So. 2d 211 (1959).

5. —Medical benefits.

The two-year statute of limitations in Miss. Code Ann. § 71-3-35(1) expressly excepts medical expenses; it is possible, under the statute, for an employer to dispute compensability yet provide medical treatment without waiving the statute of limitations. Lindsay Logging, Inc. v. Watson, 44 So. 3d 388 (Miss. Ct. App. 2010), writ of certiorari denied by 49 So. 3d 106, 2010 Miss. LEXIS 495 (Miss. 2010).

Miss. Code Ann. § 71-3-35(1) expressly excludes medical benefits from payments of compensation that could toll the statute. Baker v. IGA Super Valu Food Store, 990 So. 2d 254 (Miss. Ct. App. 2008), writ of certiorari denied en banc by 994 So. 2d 186, 2008 Miss. LEXIS 458 (Miss. 2008).

In light of the language "other than medical treatment" in § 71-3-35(1), medical payments are within the meaning of "payment or compensation" unless specifically excepted therefrom. Barr v. Conoco Chems., Inc., 412 So. 2d 1193 (Miss. 1982).

A claim for workman's compensation medical benefits was barred by this section where the claim was filed more than 2 years after the injury and where the claimant did not receive compensation other than medical treatment within the 2 year period. Speed Mechanical, Inc. v. Taylor, 342 So. 2d 317 (Miss. 1977).

In a workmen's compensation case, the furnishing of medical services and supplies is the payment of compensation for the purpose of tolling any statute of limitations which might apply. Cox v. International Harvester Co., 221 So. 2d 924 (Miss. 1969).

Payment of medical expenses is payment of compensation tolling the statute of limitations. Graeber Bros. v. Taylor, 237 Miss. 691, 115 So. 2d 735 (1959), error overruled 237 Miss. 691, 117 So. 2d 469.

The Workmen's Compensation Law evidences the legislative intent to put the same period of limitations on the payment of medical benefits as has been put on the payment of compensation. Trehern v. Grafe Auto Co., 232 Miss. 854, 100 So. 2d 786 (1958).

Where a claimant had been paid some medical compensation benefits, and, together with the carrier, had executed a form under which the claim was closed, a claim for additional medical benefits filed nearly four years later was barred by the statute of limitations. Trehern v. Grafe Auto Co., 232 Miss. 854, 100 So. 2d 786 (1958).

6. —Injury in another state.

The limitation period for claiming compensation under Mississippi law is tolled while the employee, injured while temporarily working in another state for his Mississippi employer, was receiving compensation under the law of that state. Martin v. L. & A. Contracting Co., 249 Miss. 441, 162 So. 2d 870 (1964).

An employer is estopped from relying on the limitation period for the filing of a claim by his voluntary payment of compensation under the law of the state in which injury occurred, in which benefits were substantially less. Martin v. L. & A. Contracting Co., 249 Miss. 441, 162 So. 2d 870 (1964).

7. —Latent injury.

Motion to dismiss an employee's petition to controvert with the Mississippi Workers' Compensation Commission was properly denied because the statute of limitations, Miss. Code Ann. § 71-3-35(1), for the employee's labyrinthine concussion began to run at the time it was diagnosed on September 6, 2000; therefore, the employee acted within the two-year limit by filing the petition to controvert on February 7, 2002. Miss. State Univ. v. Panuska, 20 So. 3d 717 (Miss. Ct. App. 2009).

A claim for worker's compensation was not barred by the statute of limitations where it was virtually impossible for the claimant to have known at the time of the apparently minor accident, then noncompensable, that it would develop into a compensable injury; being a latent injury case, the average weekly wage was properly determined from the date of the resultant disabling injury and not from the date of the accident. Pepsi Cola Bottling Co. v. Long, 362 So. 2d 182 (Miss. 1978).

Where claimant knew or had reason to believe that she had sustained a spider bite, but there was nothing in the record to indicate that she, as a reasonable person, should have recognized the nature, seriousness, and probable compensable character of the injury, the statute of limitations did not begin to run until by reasonable care and diligence it was discoverable and apparent that a compensable injury had been sustained. Struthers Wells-Gulfport, Inc. v. Bradford, 304 So. 2d 645 (Miss. 1974).

Where latent injuries are involved, the time for filing a compensation claim under the two-year statute commences to run when it becomes reasonably discoverable that the claimant has sustained a compensable injury and disability, or, in other words, the claim period runs from the time a compensable injury becomes reasonably apparent. Tabor Motor Co. v. Garrard, 233 So. 2d 811 (Miss. 1970).

Where a garage foreman was burned by a supposed hot welding spark falling into his ear, and none of the several doctors who treated him discovered that the source of his dizziness and other physical problems which followed the injury was a piece of slag which had become embedded in the middle ear, a workmen's compensation claim filed within two years after the relationship between the disability and the apparently minor accident became known was timely, even though the claim was filed more than two years after the accident. Tabor Motor Co. v. Garrard, 233 So. 2d 811 (Miss. 1970).

That claimant did not definitely ascertain the exact result of his injury until after the expiration of two years does not prevent the running of the two-year statute of limitations. Thyer Mfg. Co. v. Keys, 235 Miss. 229, 108 So. 2d 876 (1959).

8. —Death.

The administrator of a deceased workman's estate was not an "other representative" within the meaning of the statute providing that limitations would begin to run against minor claimants at the time they acquired a guardian or other authorized representative, since the claims of death beneficiaries are not assets of the estate of a deceased employee, and the guardian or other representative contemplated by the statute must be a fiduciary who not only has the power but the duty to prosecute the minor's claim for compensation benefits. United States Fid. & Guar. Co. v. Fortner, 234 So. 2d 636 (Miss. 1970).

The fact that an employee filed no claim for injury within the two-year limitation period established by this section [Code 1942, § 6998-18] will not operate to bar a claim filed by his dependents within two years after the date of his death. Ingalls Shipbuilding Corp. v. Dependents of Harris, 187 So. 2d 886 (Miss. 1966).

In the absence of a hearing and order which would have the effect of deciding an employee's claim on its merits during his lifetime, thereby constituting res judicata as to all parties in interest, the two-year statute against the claim of his dependents begins to run from the date of his death, and not from the date of the injury. Ingalls Shipbuilding Corp. v. Dependents of Harris, 187 So. 2d 886 (Miss. 1966).

9. Pleading and practice.

Award of disability benefits to the employee was improper because the employee's claim was barred by the two-year statute of limitations set forth in Miss. Code Ann. § 71-3-35(1); it was possible for the employer to dispute compensability yet provide medical treatment without waiving the statute of limitations. Even if it could have been inferred that the employer's intent behind payments to the employee was in lieu of compensation, those four days did not satisfy the five-day waiting period that was required in Miss. Code Ann. § 71-3-11. Lindsay Logging, Inc. v. Watson, 44 So. 3d 388 (Miss. Ct. App. 2010), writ of certiorari denied by 49 So. 3d 106, 2010 Miss. LEXIS 495 (Miss. 2010).

Award of permanent total disability benefits to the employee for 450 weeks was proper in part because, even if the employee failed to notify her employer directly within 30 days as required pursuant to Miss. Code Ann. § 71-3-35(1), she was not barred from recovery since the employer had sufficient notice of the injury and was not prejudiced. Adolphe Lafont USA, Inc. v. Ayers, 958 So. 2d 833 (Miss. Ct. App. 2007).

Trial court did not err in finding the reinstatement of an employee's workers' compensation claim to be time barred under the one-year time period in Miss. Code Ann. § 71-3-53 and the two-year period in Miss. Code Ann. § 71-3-35, where even using the employee's calculation, the two-year deadline would have expired before she filed her motion for reinstatement. Edwards v. Wal-Mart, 930 So. 2d 1273 (Miss. Ct. App. 2006).

Failure to plead the bar of limitations before the attorney-referee does not preclude the employer from doing so in the first pleading required to be addressed to the commission. Thyer Mfg. Co. v. Keys, 235 Miss. 229, 108 So. 2d 876 (1959).

10. Estoppel.

Employee was estopped from asserting the statute of limitations, Miss. Code Ann. § 71-3-35(1), as a defense because the employer failed to comply with the notice requirements of Miss. Code Ann. § 71-3-67(1), and the employee testified that he did not file a claim for workers' compensation because he was under the impression that the employer had filed it for him. Prentice v. Schindler Elevator Co., 13 So. 3d 1258 (Miss. 2009).

The employer was estopped from asserting the statute of limitation as a bar to a claim for benefits where the administrative judge on contested evidence found an affirmative misrepresentation by the employer intended to mislead the claimant into not filing for benefits Brock v. Hankins Lumber Co., 786 So. 2d 1064 (Miss. Ct. App. 2000).

Although the claimant admitted that he did not file his petition to controvert within the two year time limitation set forth in subsection (1), the employer city was estopped from asserting the statute of limitations where the city failed to file the statutorily required notice of controversy, told the claimant that it would file his claim, and engaged in settlement negotiations for a significant period of time. McCrary v. City of Biloxi, 757 So. 2d 978 (Miss. 2000).

RESEARCH REFERENCES

ALR. When limitation period begins to run against cause of action or claim for contracting of disease. 11 A.L.R.2d 277.

When time period commences as to claim under workers' compensation or occupational diseases act for death of worker due to contraction of disease. 100 A.L.R.5th 567.

When Limitations Period Begins to Run as to Claim for Disability Benefits for Contracting of Disease under Workers' Compensation or Occupational Diseases Act. 86 A.L.R.5th 295.

Am Jur. 82 Am. Jur. 2d, Workmen's Compensation §§ 449 et seq., 484.

25 Am. Jur. Pl and Pr Forms (Rev), Workmen's Compensation, Forms 1 et seq.

CJS. 100 C.J.S., Workmen's Compensation §§ 824-827 et seq., 837 et seq.

Law Reviews. 1979 Mississippi Supreme Court Review: Administrative Law. 50 Miss. L. J. 699, December 1979.

Bradley, Time limitations which bar claims in Mississippi workers' compensation: a re-examination. 62 Miss. L. J. 511, Spring, 1993.

Higginbotham, Reopening and due process in claims review. 62 Miss. L. J. 609, Spring, 1993.

§ 71-3-37. Payment of compensation.

(1) Compensation under this chapter shall be paid periodically, promptly, in the usual manner, and directly to the person entitled thereto, without an award except where liability to pay compensation is controverted by the employer.

(2) The first installment of compensation shall become due on the fourteenth (14th) day after the employer has notice, as provided in Section 71-3-35, of the injury or death, on which date all compensation then due shall be paid. Thereafter, compensation shall be paid in installments, every fourteen (14)

days, except where the commission determines that payment in installments should be made at some other period.

(3) Upon making the first payment and upon suspension of payment for any cause, the employer shall immediately notify the commission in accordance with a form prescribed by the commission that payment of compensation has begun or has been suspended, as the case may be. No suspension in payments of compensation shall be made for refusing to submit to medical or surgical treatment until the reasonableness of such request or refusal has been determined by the commission, and a written order suspending payment issued.

(4) If the employer controverts the right to compensation he shall file with the commission, on or before the fourteenth (14th) day after he has knowledge of the alleged injury or death, a notice in accordance with a form prescribed by the commission, stating that the right to compensation is controverted, the name of the claimant, the name of the employer, the date of the alleged injury or death, and the grounds upon which the right to compensation is controverted. Failure to file this notice shall not prevent the employer raising any defense where claim is subsequently filed by the employee, nor shall the filing of the notice preclude the employer raising any additional defense.

(5) If any installment of compensation payable without an award is not paid within fourteen (14) days after it becomes due, as provided in subsection (2) of this section, there shall be added to such unpaid installment an amount equal to ten percent (10%) thereof, which shall be paid at the same time as, but in addition to, such installment unless notice is filed under subsection (4) of this section, or unless such nonpayment is excused by the commission after a showing by the employer that owing to conditions over which he had no control such installment could not be paid within the period prescribed for the payment.

(6) If any installment payable under the terms of an award is not paid within fourteen (14) days after it becomes due, there shall be added to such unpaid installment an amount equal to twenty percent (20%) thereof, which shall be paid at the same time as, but in addition to, such compensation unless review of the compensation order making such award is had.

(7) Within thirty (30) days after the final payment of compensation has been made, the employer shall send to the commission a notice in accordance with a form prescribed by the commission, stating that such final payment has been made, the total amount of compensation paid, the name of the employee and of any other person to whom compensation has been paid, the date of the injury or death, and the date to which compensation has been paid. If the employer fails so to notify the commission within such time, the commission may assess against such employer a civil penalty in an amount not exceeding One Hundred Dollars ($100.00). No case shall be closed nor any penalty be assessed without notice to all parties interested and without giving to all such parties an opportunity to be heard.

(8) The commission (a) may upon its own initiative at any time in a case in which payments are being made without an award, and (b) shall in any case

where right to compensation is controverted or where payments of compensation have been stopped or suspended, upon receipt of notice from any person entitled to compensation or from the employer that the right to compensation is controverted or that payments of compensation have been stopped or suspended, make such investigations, cause such medical examinations to be made, hold such hearings, and take such further action as it considers will properly protect the rights of all parties.

(9) Whenever the commission deems it advisable, it may require any self-insurer to make a deposit with the State Treasurer to secure prompt and convenient payment of such compensation; and payments therefrom upon any awards shall be made upon order of the commission.

(10) Whenever the commission determines that it is for the best interests of a person entitled to compensation, the liability of the employer for compensation, or any part thereof as determined by the commission, may be discharged by the payment of a lump sum equal to the present value of future compensation payments commuted, computed at four percent (4%) true discount compounded annually. The probability of the death of the injured employee or other person entitled to compensation shall be determined in accordance with validated actuarial tables or factors as the commission finds equitable and consistent with the purposes of the Workers' Compensation Law, and the probability of the remarriage of the surviving spouse or other person entitled to compensation may be determined in accordance with rules adopted by the commission which shall apply validated actuarial tables or factors as the commission finds equitable and consistent with the purposes of the Workers' Compensation Law. The probability of the happening of any other contingency affecting the amount or duration of the compensation shall be disregarded. The commission shall be the sole judge as to whether or not a lump-sum payment shall be to the best interest of the injured worker or his dependents.

(11) If the employer has made advance payments of compensation, he shall be entitled to be reimbursed out of any unpaid installment or installments of compensation due.

(12) An injured employee or, in case of death, his dependents or personal representative shall give receipts for payment of compensation to the employer paying the same; and whenever required, such employer shall produce the same for inspection by the commission.

(13) Whenever a dispute arises between two (2) or more parties as to which party is liable for the payment of workers' compensation benefits to an injured employee and there is no genuine issue of material fact as to the employee's employment, his average weekly wage, the occurrence of an injury, the extent of the injury, and the fact that the injury arose out of and in the course of the employment, the commission may require the disputing parties involved to pay benefits immediately to the employee and to share equally in the payment of those benefits until it is determined which party is solely liable, at which time the liable party must reimburse all other parties for the benefits they have paid to the employee with interest at the legal rate.

SOURCES: Codes, 1942, § 6998-19; Laws, 1948, ch. 354, § 13; Laws, 1950, ch. 412, § 8; reenacted without change, Laws, 1982, ch. 473, § 19; Laws, 1987, ch. 361, § 4; reenacted without change, Laws, 1990, ch. 405, § 19; Laws, 1992, ch. 577, § 4; Laws, 2007, ch. 349, § 1, eff from and after passage (approved Mar. 15, 2007.)

Cross References — Structured settlements, generally, see §§ 11-57-1 et seq.

Establishment of a special worker's compensation account for payment of compensation, see § 71-3-38.

JUDICIAL DECISIONS

1. In general.
2. Employee's refusal to submit to medical or surgical treatment.
3. Penalties and interest, generally.
4. —Interest.
5. —Penalty without award.
6. —Penalty under award.
7. —Penalty for suspension of payment.
8. —Upon appeal.
9. Notice as to closing of case.

1. In general.

Employer was a contractor, not a subcontractor, of the three timber owners, as neither of the three companies had already contracted for the performance of the work done by the employer; neither company was the employee's statutory employer under Miss. Code Ann. § 71-3-7 and had no statutory responsibility to insure the employee; assuming the Mississippi Workers' Compensation Commission (Commission) was empowered under Miss. Code Ann. § 71-3-37(13) to determine whether another company was contractually bound, the Commission was entitled to accept the testimony that the company never agreed to provide workers' compensation coverage for the employer, but instead, required the employer to have its own workers' compensation insurance. Miss. Loggers Self Insured Fund, Inc. v. Andy Kaiser Logging, 992 So. 2d 649 (Miss. Ct. App. 2008), writ of certiorari denied by 997 So. 2d 924, 2008 Miss. LEXIS 537 (Miss. 2008).

In a case for contribution, a fire department correctly argued that the case to apportion the responsibility for workers' compensation benefits should have been brought, if at all, before the Mississippi Workers' Compensation Commission pursuant to Miss. Code Ann. § 71-3-37(13). Travelers Prop. & Cas. Co. v. City of Greenwood Fire Dep't, 441 F. Supp. 2d 776 (N.D. Miss. 2006).

Employee's workers' compensation claim for injuries in 1992 and 1995 was barred as the employee had filed a B-31 form shortly after each injury that allowed the employer to close the claim one year after the form had been filed. Hancock v. Miss. Forestry Comm'n, 878 So. 2d 1058 (Miss. Ct. App. 2004).

Differences in the numbers on the two B-31s Forms were mere corrections of the amount actually paid, and that no additional benefits were furnished to the claimant after his settlement; the filing of a B-31 Form containing errors as to the amount of the benefits paid was sufficient to begin the running of the statute of limitations and the filing of a corrected form did not interrupt the limitations period, even if it was without notice to the claimant. McCrimon v. Red Arrow Car Wash, 859 So. 2d 395 (Miss. Ct. App. 2003).

Under Mississippi law, the duty of workers' compensation carrier to pay benefits is owed by carrier to injured claimant. Rogers v. Hartford Acc. & Indem. Co., 133 F.3d 309 (5th Cir. 1998).

Under Mississippi law, when workers' compensation carrier knows of insured's employee's injury, and insured does not controvert the injury, carrier has duty to begin paying benefits directly to injured claimant. Rogers v. Hartford Acc. & Indem. Co., 133 F.3d 309 (5th Cir. 1998).

The proper credit due an employer under § 71-3-37(11) for wages paid to its employee was the amount of the weekly compensation rate for the number of weeks that the employee continued to work after his injury rather than the total earnings of the employee for the weeks worked. Sturgis v. International Paper Co., 525 So. 2d 813 (Miss. 1988).

Where there is a previous injury or disability, permanent partial disability benefits must be apportioned from the date of the claimant's maximum medical recovery. Central Elec. & Mach. Co. v. Shelton, 220 So. 2d 320 (Miss. 1969).

The commission has full power and authority to determine all questions relating to claims for compensation, including the authority to make such investigations as it deems necessary; it has specific authority to order medical examinations; and comprehensive judicial review of the commission's action is provided for. Everitt v. Lovitt, 192 So. 2d 422 (Miss. 1966).

The actuarial possibility of a woman's remarriage may be taken into account in determining the value of an executory interest taking effect in case of her remarriage. Hemphill v. Mississippi State Hwy. Comm'n, 245 Miss. 33, 145 So. 2d 455 (1962).

The allowance and payment of a lump sum does not discharge the continuing obligation to pay medical expenses, nor is such obligation to be considered in fixing such sum. J.H. Moon & Sons v. Hood, 244 Miss. 564, 144 So. 2d 782 (1962).

An instalment of workmen's compensation which was due, but unpaid, at the time of the death of the beneficiary constitutes assets of his estate. Truck Trailer Sales & Serv. Co. v. Moore, 244 Miss. 317, 141 So. 2d 541 (1962).

A claim for workmen's compensation, listed in bankruptcy proceedings as a debt of the employer, may be barred by his discharge, although the claim has not been adjudicated by the commission. Crum v. Dependents of Reed, 241 Miss. 111, 129 So. 2d 375 (1961).

The controversion of a physician's report by a claimant, upon the ground that he was entitled to compensation for a longer period, did not operate as a controversion for the employer. White v. R.C. Owen Co., 232 Miss. 268, 98 So. 2d 650 (1957).

An employer's purchase of a $5,000 policy on the life of an employee did not release him from liability to the widow and dependents of the employee for benefits they were entitled to under the Workmen's Compensation Law following the death of the employee in the course of employment. Riddell v. Cagle's Estate, 227 Miss. 305, 85 So. 2d 926 (1956).

Where an award to the dependent mother of the deceased employee was ordered by the commission in instalments, from which she did not appeal and there was nothing in the commission record to show error in the commission not computing the award for lump sum payment, it was error in the circuit court to hear evidence dehors and to order an award to the mother in lump sum. Stephens v. Moore, 214 Miss. 760, 59 So. 2d 346 (1952), error overruled, 214 Miss. 760, 59 So. 2d 846 (1952), corrected, 215 Miss. 3, 60 So. 2d 391 (1952), overruled on other grounds, Railway Express Agency, Inc. v. Hollingsworth, 221 Miss. 688, 75 So. 2d 639 (1954).

This section [Code 1942, § 6998-19] has reference to advance payments of compensation made by the employer to render temporary assistance to an employee or his dependent pending the termination of the claim for compensation, for which advance payments the employer would be entitled to be entirely reimbursed by the employee, since there is no reason why deductions from the payment when allowed shall be borne equally by the attorney and the client, the attorney receiving no benefit from such advance payments. American Sur. Co. v. Boykin, 212 Miss. 310, 54 So. 2d 398 (1951).

Subsection c of § 26, ch. 354, Laws of 1948, as amended by Laws 1950, ch. 412, (Code 1942, § 6998-32), providing that where an award of compensation becomes final and an attorney fee is outstanding, a partial lump sum settlement sufficient to cover the attorney fee approved therein by the commission shall be made immediately from payments to become due, and the deductions allowed by law shall be borne equally by the attorney and client, has no reference to subsection (k) of Code 1942, § 6998-19. American Sur. Co. v. Boykin, 212 Miss. 310, 54 So. 2d 398 (1951).

In computing compensation benefits to a widow, the probability of remarriage before the expiration of the 450 weeks during which the widow is entitled to compensation must be taken into account. United States Fid. & Guar. Co. v. Smith, 211 Miss. 573, 52 So. 2d 351 (1951).

Where a man and woman lived together for three years and a child was born, but they did not hold themselves out as husband and wife, and both later separated and each of them contracted a ceremonial marriage, this was insufficient evidence to substantiate a common law marriage and the man's ceremonial marriage was valid, and the widow was entitled to compensation upon the death of her husband. United States Fid. & Guar. Co. v. Smith, 211 Miss. 573, 52 So. 2d 351 (1951).

2. Employee's refusal to submit to medical or surgical treatment.

A claimant who, having requested and received payment of a lump settlement under subsection (j) of this section [Code 1942, § 6998-19], calculated upon the basis of permanent and total disability resulting as a consequence of an injury involving herniated intervertebral discs, and having, throughout the years which had elapsed since the injury, repeatedly and steadfastly refused to undergo a surgical procedure known as a laminectomy which would, in medical opinion, substantially reduce her disability below the total disability upon the basis of which she had received payment, and which in all probability would enable her to return to work, was not thereafter estopped to demand additional medical payments from the employer-carrier for the surgery she had previously declined, in the absence of a showing of fraud. Lawrin Co. v. Frazier, 213 So. 2d 548 (Miss. 1968).

The commission's authority to order a claimant to submit to a medical examination by a physician of its choice is clear. Everitt v. Lovitt, 192 So. 2d 422 (Miss. 1966).

While an injured workman will be denied compensation for incapacity which may be removed or modified by an operation of a simple character, not involving serious suffering or danger, where the operation is of a serious character, involves serious suffering or danger, or is doubtful of success, an injured employee's refusal to submit to such an operation is not unreasonable, and the right to compensation is not precluded by such refusal. Walker v. International Paper Co., 230 Miss. 95, 92 So. 2d 445 (1957).

The burden of proving that an operation tendered to an insured workman is simple, safe, and will probably effect a cure or substantial improvement for the employee was upon the employer. Walker v. International Paper Co., 230 Miss. 95, 92 So. 2d 445 (1957).

Whether an injured employee's refusal to submit to proper medical treatment is unreasonable is ordinarily a question of fact for the determination of the workmen's compensation commission. Walker v. International Paper Co., 230 Miss. 95, 92 So. 2d 445 (1957).

Since the workmen's compensation commission's order, holding that a claimant's refusal to submit to surgery for a herniated disc was not unreasonable, was supported by substantial evidence, the commission's order awarding claimant compensation was reinstated and affirmed. Walker v. International Paper Co., 230 Miss. 95, 92 So. 2d 445 (1957).

3. Penalties and interest, generally.

It was not necessary to assess a 10 percent penalty against an employer pursuant to Miss. Code Ann. § 71-3-37(5) because there were no unpaid workers' compensation benefits prior to an administrative law judge's award. Price v. Omnova Solutions, Inc., 17 So. 3d 104 (Miss. Ct. App. 2009), writ of certiorari denied by 17 So. 3d 99, 2009 Miss. LEXIS 425 (Miss. 2009).

Where an administrative law judge for the Mississippi workers' compensation commission determined that a former employee was entitled to temporary total disability benefits for 64.75 weeks for a hip injury that remained due and owing as of a certain date, and to permanent partial disability benefits for 64.75 weeks beginning on a certain date for injury to the employee's hip, the court remanded the matter to the commission to determine when the employee became entitled to such payments and when each was made and, based on that, to determine whether the employee was entitled to penalties and interest for late payments pursuant to Miss. Code Ann. § 71-3-37(5). Smith v. Rizzo Farms, Inc., 870 So. 2d

1231 (Miss. Ct. App. 2003), cert. denied, 870 So. 2d 666 (Miss. 2004).

Employer of injured employee could avoid statutory penalties because it began payments to the employee for salary continuation beginning on the date of injury. Kemper Nat'l Ins. Co. v. Coleman, 812 So. 2d 1119 (Miss. Ct. App. 2002).

Rule requiring liberal construction of Workers' Compensation Act generally does not apply to provisions for imposing penalties, and such provisions are to be strictly construed; presumptions are against one claiming statutory penalty and all questions of doubt are resolved in favor of the one against whom penalty is sought to be imposed. Mississippi Transp. Comm'n v. Dewease, 691 So. 2d 1007 (Miss. 1997).

Workers' compensation claimant was not entitled to interest and penalties for past nursing services provided by his wife, where employer provided claimant with myriad services which contributed greatly to comfort and convenience of both claimant and his wife. Mississippi Transp. Comm'n v. Dewease, 691 So. 2d 1007 (Miss. 1997).

An injured employee's failure to request compensation did not preclude his employer's liability for the mandatory penalty for failure to pay compensation under § 71-3-37(5) where the employer had notice of the employee's injury and failed to file a notice of intention to controvert or show that the installment could not have been paid within the period prescribed for the payment because of conditions over which the employer had no control; by not voluntarily paying compensation, the employer assumed the risk of error despite the fact that it had no knowledge of the employee's status after he was terminated. Smith v. Jackson Constr. Co., 607 So. 2d 1119 (Miss. 1992).

Both the 10 percent penalty imposed for failure to pay an installment of compensation payable without an award within 14 days after it becomes due, and the 20 percent penalty for failure to pay an installment payable under the terms of an award within 14 days after it becomes due, could be imposed upon the same installments of compensation, so that when an employer failed to pay a judgment within 14 days after the award became final, the 20 percent penalty applied to the judgment, which consisted of vested installments together with interest and the 10 percent penalty, as well as to installments due after the award. Delchamps, Inc. v. Baygents, 578 So. 2d 620 (Miss. 1991).

The Workers' Compensation Commission erred in assessing statutory penalties against unpaid medical expenses. International Paper Co. v. Kelley, 562 So. 2d 1298 (Miss. 1990).

The 10 percent statutory penalty was waived where dependents of deceased workman failed to request imposition thereof to the administrative judge or the full commission. M & J Oil Co. v. Dependents of Wilson, 498 So. 2d 344 (Miss. 1986).

Employer is not subject to penalty for weeks in which employer pays or causes to be paid to claimant amount under company benefit plan which is in excess of amount otherwise payable as worker's compensation; employer is liable for failure to pay compensation after period of compensation under company benefit plan has ended. South Cent. Bell Tel. Co. v. Aden, 474 So. 2d 584 (Miss. 1985).

There are only 3 circumstances under which employer may of right claim relief from burdens of penalty assessed by Commission in accordance with § 71-3-37: (1) that employer has paid compensation installments within 14 days of due date; (2) in alternative, that employer has filed notice to controvert within 14 days of day notice of injury is received; or (3) that nonpayment is result of conditions over which employer has no control. South Cent. Bell Tel. Co. v. Aden, 474 So. 2d 584 (Miss. 1985).

Penalty provisions of Workers' Compensation Act (§ 71-3-37), designed to provide measure of compensation where claims are not promptly paid due to negligence of carrier, are inadequate to deter intentional wrongdoing by carrier; injured worker may bring common law tort action against carrier predicated upon carrier's intentional refusal to pay workers' compensation medical and weekly compensation benefits notwithstanding admitted residual permanent disability. Southern

Farm Bureau Cas. Ins. Co. v. Holland, 469 So. 2d 55 (Miss. 1984).

An employee was not entitled to a penalty award for the period from his initial hospitalization to the filing of his claim more than eight months later; however, a penalty award would be assessed against the employer and its carrier from the date the employee had filed a motion to controvert where the employer had not responded to the claim for more than three months after it had been filed. Sperry-Vickers, Inc. v. Honea, 394 So. 2d 1380 (Miss. 1981).

Where the record disclosed a contract for attorney's fees of one-third, and also revealed that the employer and the workmen's compensation insurance carrier did not file notice to controvert the claim within the time allowed by Code 1942, § 6998-19 a judgment on the claim would be modified to allow the attorney's fee, statutory interest, and the statutory penalty, to be fixed in the amount found to be due by the commission. Tiller v. Southern U.S.F., Inc., 246 So. 2d 530 (Miss. 1971).

The imposition of the penalty provided by this section [Code 1942, § 6998-19] is mandatory where the facts justify its imposition. New & Hughes Drilling Co. v. Smith, 219 So. 2d 657 (Miss. 1969).

The failure of a claimant to timely petition the enforcement of the penalty provided by this section [Code 1942, § 6998-19] constitutes a waiver of his right to do so. New & Hughes Drilling Co. v. Smith, 219 So. 2d 657 (Miss. 1969).

The penalty should not be exacted from one who, having voluntarily paid compensation in another state and obtained a settlement agreement, has resisted a claim made under the Mississippi statute. Harrison Co. v. Norton, 244 Miss. 752, 146 So. 2d 327 (1962).

This penalty is for nonpayment of weekly installments of compensation, and not of medical expenses. J.H. Moon & Sons v. Hood, 244 Miss. 564, 144 So. 2d 782 (1962).

Motion to dismiss and for statutory damages, penalties and interest would be denied where the appeal was timely taken. Dapsco, Inc. v. Upchurch's Dependent, 243 Miss. 427, 138 So. 2d 287 (1962), overruled on other grounds, Banks v. Banks, 511 So. 2d 933 (Miss. 1987).

4. —Interest.

Finding in favor of the employee in his workers' compensation action was proper pursuant to Miss. Code Ann. §§ 71-3-17(c)(25), 71-3-37(5), and 71-3-15, where the employee offered medical proof that the injury manifested its symptoms in an area other than that of the initial impact; further, the computation of disability benefits totaled one cent less than the amount awarded by the administrative judge and the appellate court did not find that a one-cent rounding error difference was arbitrary or capricious, Miss. Code Ann. § 71-3-17(25). Cives Steel Co. Port of Rosedale v. Williams, 905 So. 2d 661 (Miss. Ct. App. 2004).

A claimant is entitled to interest on unpaid installments of a referee's award from their due dates until the commission's modification of the award. Busby v. Ingalls Shipbuilding Corp., 236 Miss. 870, 113 So. 2d 126 (1959).

Supreme court, on reversing denial of compensation, may require payment of interest on each instalment from its due date until paid. Goodnite v. Farm Equip. Co., 234 Miss. 342, 103 So. 2d 391 (1958), corrected on other grounds, 234 Miss. 356, 106 So. 2d 383 (1958), error overruled, 234 Miss. 360, 106 So. 2d 683 (1958).

Claimants were entitled to interest at 6 percent per annum from the respective due dates of workmen's compensation payments until paid or tendered. Dependents of Harris v. Suggs, 233 Miss. 533, 102 So. 2d 696 (1958).

Where the insurance carrier discontinued compensation payments to the claimant without notice to or authority from the commission, the claimant was entitled to a penalty of 10 percent on unpaid installments which were more than 14 days overdue, together with interest to be paid on each weekly instalment. Cumbest Mfg. Co. v. Pinkney, 225 Miss. 318, 83 So. 2d 74 (1955), corrected on other grounds, 225 Miss. 330, 84 So. 2d 421 (1956).

5. —Penalty without award.

Where claimant was injured in January 27, 1965, and notice was given to the employer on the same day, and the claim was not controverted until May 3, 1965, subsequent to the filing of a claim for benefits on April 7, 1965, the claimant would clearly have been entitled to the penalty provided by this section [Code 1942, § 6998-19], had timely request been made therefor. New & Hughes Drilling Co. v. Smith, 219 So. 2d 657 (Miss. 1969).

The assessment of the penalty provided by this section [Code 1942, § 6998-19] is mandatory where the facts coincide with those mentioned in subsection (e) of this section. Murphy v. Jac-See Packing Co., 208 So. 2d 773 (Miss. 1968).

Where the carrier had sufficient notice of a claim of injury and neither filed notice to controvert the claim nor, due to circumstances beyond its control, sought to be excused therefrom, it was error on the part of the commission and the circuit court not to award the 10 percent penalty. Goasa & Son v. Goasa, 208 So. 2d 575 (Miss. 1968), overruled on other grounds, Cockrell Banana Co. v. Harris, 212 So. 2d 581 (Miss. 1968).

The workmen's compensation commission has no discretion in the application of subsection (e) of this section [Code 1942, § 6998-19] and must impose the penalty unless the same is controverted by the carrier or employer or is excused by the commission. Goasa & Son v. Goasa, 208 So. 2d 575 (Miss. 1968), overruled on other grounds, Cockrell Banana Co. v. Harris, 212 So. 2d 581 (Miss. 1968).

Where compensation awards were not made in compliance with subsection (e) of this section [Code 1942, § 6998-19], the claimant was entitled to the 10 percent penalty. Knight v. Stachel, 193 So. 2d 593 (Miss. 1967).

A 10 percent penalty is applicable only to instalments of compensation that become due between the due date of the first instalment and the date of the attorney-referee's award, and a penalty award on future compensation instalments could not be allowed. Medart Lockers, Inc. v. Yarbrough, 251 Miss. 124, 168 So. 2d 660 (1964).

Where the dependents' claim for compensation was filed about 2 ½ months after the death of the deceased, and was immediately controverted by the employer and its insurance carrier, and no compensation was paid to the dependents within 14 days after it became due, nor did the employer or its insurance carrier controvert the claim within 14 days, as required by subsection (d) of this section [Code 1942, § 6998-19], the commission did not abuse its discretion in assessing the 10 percent penalty provided for in subsection (e), and making these penalties applicable to all instalments of compensation that became due between the date of the first instalment and the date of the attorney-referee's award. Truck Trailer Sales & Serv. Co. v. Moore, 244 Miss. 317, 141 So. 2d 541 (1962).

A penalty is properly imposed upon an employer who, though reporting the alleged injury, neither paid compensation nor controverted the claim. Maloney Constr. Co. v. Strickland, 237 Miss. 440, 114 So. 2d 851 (1959).

The allowance of a penalty against an employer for failure to pay compensation without an award is optional with the commission. Gulf Park College v. Wheeler, 237 Miss. 155, 113 So. 2d 666 (1959).

Where the employer did not controvert the claim within 14 days, nor did it begin paying compensation, the assessment of a 10 percent penalty was mandatory. Dependents of Harris v. Suggs, 233 Miss. 533, 102 So. 2d 696 (1958).

The 10 percent penalty is applicable to all instalments of compensation that became due between the due date of the first instalment and the date of the attorney-referee's award. Dependents of Harris v. Suggs, 233 Miss. 533, 102 So. 2d 696 (1958).

Where the employer failed to make compensation payments within 14 days after receiving a report by attending physicians elected by the employer, showing the extent of the employee's eye injury, did not controvert the right to compensation, and failed to make payments even following the decisions of the attorney-referee, the commission, or the circuit court, the employer, in the absence of a sufficient showing in the record of tender of payment, was in default and the 10 percent penalty should have been allowed. White v. R.C. Owen Co., 232 Miss. 268, 98 So. 2d 650 (1957).

Where the employer had notice of the employee's injury from the time it occurred and had had notice within a month thereafter that the employee claimed that injury arose out of and in course of his employment, but the employer, after completing an investigation, merely advised the commission that the employer was not in position to give the case further attention and failed to file a notice to controvert, the commission should have expressly adjudicated that the employer was liable for the 10 percent penalty on all instalments due and unpaid at the time the commission made its award. Alexander Smith, Inc. v. Genette, 232 Miss. 166, 98 So. 2d 455 (1957).

Where it was admitted that the self-insurer did not comply with the Workmen's Compensation Law in regard to compensation payments, the 10 percent penalty required by subsection (e) of this section [Code 1942, § 6998-19] was allowed. James F. O'Neil, Inc. v. Livings, 232 Miss. 118, 98 So. 2d 148 (1957).

Where an employer fails to controvert the right to compensation within 14 days from the date of knowledge of an injury or death and later raises a defense when claim is subsequently filed, and the commission makes an award of compensation, the 10 percent penalty applies to those instalments of compensation becoming due between the due date of the first instalment and the date the commission makes the award of compensation. Southern Eng'g & Elec. Co. v. Chester, 226 Miss. 136, 83 So. 2d 811 (1955), corrected, 226 Miss. 151, 84 So. 2d 535 (1956).

6. —Penalty under award.

Compensation is not apportionable until the date of maximum medical recovery, regardless of whether an injury is permanent and total or of lower quality and character; thus, a 10% penalty was correctly applied to the unapportioned amounts payable prior to the date of maximum medical recovery. M.D. Hayles Lumber, Inc. v. Hamilton, 366 So. 2d 1075 (Miss. 1978).

Where there was a review of the order making the award of compensation for injuries received in an industrial accident, it was not mandatory that the commission should assess the 20 percent penalty, provided for by subsection (f) of this section [Code 1942, § 6998-19], even though the review was not at the instance of the employer. White v. R.C. Owen Co., 232 Miss. 268, 98 So. 2d 650 (1957).

Subsection (f) of this section [Code 1942, § 6998-19], providing that the 20 percent penalty should be assessed if any installment payment under the terms of an award is not made within 14 days after it becomes due, construed to mean that the period of 14 days should be calculated from the date the order making the award becomes final. T.C. Fuller Plywood Co. v. Moffett, 231 Miss. 382, 95 So. 2d 475 (1957).

Where a compensation insurance carrier, who had been ordered by the workmen's compensation commission to make compensation payments to the claimant, complied with the commission's order 23 days after the date the order was entered and seven days before the time the statutory right of appeal from the order had expired, the claimant was not entitled to the 20 percent penalty provided by paragraph (f) of this section [Code 1942, § 6998-19].T. T.C. Fuller Plywood Co. v. Moffett, 231 Miss. 382, 95 So. 2d 475 (1957).

7. —Penalty for suspension of payment.

Although the commission may invoke penalties against an employer-insurer which improperly suspends compensation payments being made without an award, the imposition of such penalties is not mandatory, but optional with the commission. Weyerhaeuser Co. v. Ratliff, 197 So. 2d 231 (Miss. 1967).

Where the claims manager for a carrier discontinued compensation to claimant and paid nothing for more than 3 months without notice to or authority from the commission, the claimant is not only entitled to the payments during this period but, in addition thereto, he is entitled to a penalty of 10 percent on these unpaid payments. Guess v. Southeastern Utils. Serv. Co., 226 Miss. 637, 85 So. 2d 173 (1956).

Where the insurance carrier discontinued compensation payments to the claimant without notice to or authority from the commission, the claimant was entitled to a penalty of 10 percent on unpaid instalments which were more than 14 days overdue, together with interest to be paid on each weekly instalment. Cumbest Mfg. Co. v. Pinkney, 225 Miss. 318, 83 So. 2d 74 (1955), corrected on other grounds, 225 Miss. 330, 84 So. 2d 421 (1956).

8. —Upon appeal.

Penalty for unsuccessful appeal is appropriate only when lower court's decision in workers' compensation case is affirmed in its entirety. Mississippi Transp. Comm'n v. Dewease, 691 So. 2d 1007 (Miss. 1997).

The question of penalties under this section [Code 1942, § 6998-19] may not be raised for the first time on appeal to the supreme court. New & Hughes Drilling Co. v. Smith, 219 So. 2d 657 (Miss. 1969).

Neither payment nor penalty for nonpayment can be required of an employer-insurer while an appeal by the claimant is pending. Weyerhaeuser Co. v. Ratliff, 197 So. 2d 231 (Miss. 1967).

Reviewing court will not interfere with commissioner's imposition of penalties which is not manifestly wrong. Smith v. Crown Rigs, Inc., 245 Miss. 311, 148 So. 2d 195 (1963).

Where claimant's attorneys, at the beginning of the hearing before the attorney-referee, moved that, in the event the claimant's claim was found to be compensable, all penalties provided for in subsections (e) and (g), be assessed against the insurance carrier and its employer, but no mention was made of the assessment of penalties when the matter was heard by the commission on review and claimant prosecuted no cross-appeal to the circuit court, the matter of allowing penalties under this section [Code 1942, § 6998-19] was not before the supreme court on appeal. Fair Stores v. Bryant, 238 Miss. 434, 118 So. 2d 295 (1960).

A claimant is not entitled to the 5% penalty where delay in payment of an award is occasioned by his unsuccessful appeal. Busby v. Ingalls Shipbuilding Corp., 236 Miss. 870, 113 So. 2d 126 (1959).

A claimant is entitled to a 10% penalty for failure to pay installments payable without an award, where the circuit court has reinstated an order of the attorney-referee to that effect, and the supreme court has affirmed the circuit court. Komp Equip. Co. v. Clinton, 236 Miss. 569, 112 So. 2d 541 (1959).

Supreme court on reversing denial of compensation may require payment of interest on each instalment from its due date until paid. Goodnite v. Farm Equip. Co., 234 Miss. 342, 103 So. 2d 391 (1958), corrected on other grounds, 234 Miss. 356, 106 So. 2d 383 (1958), error overruled, 234 Miss. 360, 106 So. 2d 683 (1958).

Penalties on compensation installments to date of attorney-referee's order denying compensation will not be allowed on removal by the supreme court where it does not appear that penalties were requested before the attorney-referee, the commission, in the circuit court, and denial thereof was not assigned error or argued in supreme court. Poole v. R.F. Learned & Son, 234 Miss. 362, 103 So. 2d 396 (1958).

Where the judgment of the circuit court in a workman's compensation case was affirmed on the employer's direct appeal but reversed on the worker's cross appeal and the cause was remanded to workmen's compensation commission with directions to assess and order the payment of the penalty provided for in paragraph (e) of this section [Code 1942, § 6998-19], the worker was also entitled to a judgment for the five percent damages provided in Code 1942, § 1971, on the weekly instalment which had already accrued and remained unpaid on the date of the entry of the judgment of affirmance. Alexander Smith, Inc. v. Genette, 232 Miss. 166, 98 So. 2d 455 (1957).

Where a claimant, appealing from the decision of the workmen's compensation commission to the circuit court, successfully contended that he was entitled to recover the 20 percent penalty as provided for in subsection (f) of this section [Code 1942, § 6998-19], but was unsuccessful as to his contention that the entire award should have been judged to be due and payable, as provided in Code 1942, § 6998-25, court was authorized under Code 1942, § 1593, to apportion the cost between the parties. T.C. Fuller Plywood Co. v. Moffett, 231 Miss. 382, 95 So. 2d 475 (1957).

9. Notice as to closing of case.

Where an insurance carrier on June 16, 1977, wrote to the claimant in care of his attorney, enclosing a copy of the Final Report and Settlement Receipt and asking him to note that the form had been received in the Workmen's Compensation Commission offices on June 9th, 1977, the one-year statute of limitations begun to run on June 16, 1977, and, therefore, the claimant's application for benefits filed with the Commission on June 16, 1978, was timely. Staple Cotton Servs. Ass'n v. Russell, 399 So. 2d 224 (Miss. 1981).

Where a workmen's compensation insurance carrier mailed the final report and settlement receipt form to the claimant and the workmen's compensation commission with the notation "original hereof this date mailed to commission" it was not sufficiently established that the claimant was given notice that the form had actually been filed with the commission so as to close the claim for compensation benefits and set in motion the one year statute of limitations within which the claimant would be required to have the matter reviewed by the commission, because of an alleged mistake in a determination of fact. McLemore v. Jackson Tile Mfg. Co., 252 So. 2d 781 (Miss. 1971).

Where claimant, injured on Jan. 15, 1960, signed final settlement report filed on Feb. 18, 1960, and filed claim for same injury on Mar. 20, 1961, and subsequently on Oct. 31, 1962 amended his claim to include injuries occurring on May 1, 1960, question of whether amendment related back to date of filing original claim so as to take it out of a 1-year and 2-year limitations periods depended upon whether later injury was a new injury or further disability for previous injury, and this was a question of fact to be determined by commission. Yazoo Mfg. Co. v. Schaffer, 254 Miss. 35, 179 So. 2d 784 (1965).

Workman who signs final report and settlement receipt had notice that his employer was claiming that the payments set out in the report and receipt form were final payments, and the filing of the form complied with the requirement of subsection (g) of this section [Code 1942, § 6998-19], and consequently a claim filed with the commission more than a year later was barred by the limitation period set out in Code 1942, § 6998-27. Yazoo Mfg. Co. v. Schaffer, 254 Miss. 35, 179 So. 2d 784 (1965).

As against a claimant who had refused to sign the final report and settlement receipt submitted to him, the one-year limitation period provided for in Code 1942, § 6998-27 did not begin to run until he had received notice that the employer had filed with the workmen's compensation commission a final report and settlement receipt, properly filled out. International Paper Co. v. Evans, 244 Miss. 49, 140 So. 2d 271 (1962).

The limitations period provided for in Code 1942, § 6998-27 must be considered in connection with subsection (g) of this section [Code 1942, § 6998-19], providing that no case shall be closed without notice to all parties interested and without giving to all such parties an opportunity to be heard. International Paper Co. v. Evans, 244 Miss. 49, 140 So. 2d 271 (1962).

That a compensated employee, upon making a lump-sum settlement, signed a final receipt does not preclude him from seeking to have his case reopened for redetermination of the extent of his disability. Armstrong Tire & Rubber Co. v. Franks, 242 Miss. 792, 137 So. 2d 141 (1962).

Before the statute of limitation provided by Code 1942, § 6998-27 begins to run there must be a compliance with the provisions of subsection (g) of Code 1942, § 6998-19. Shainberg's Black & White Store v. Prothro, 238 Miss. 444, 118 So. 2d 862 (1960).

Oral notice given to claimant by insurance carrier's adjuster that the carrier considered the claim to be barred by the statute of limitations was not sufficient compliance with the notice requirement of subsection (g) of this section [Code 1942, § 6998-19]. Shainberg's Black & White Store v. Prothro, 238 Miss. 444, 118 So. 2d 862 (1960).

Filling of a final report and settlement receipt closes a case as to payments of compensation. Graeber Bros. v. Taylor, 237 Miss. 691, 115 So. 2d 735 (1959), error overruled 237 Miss. 691, 117 So. 2d 469.

Where the requirements of subsection (g) of Code 1942, § 6998-19 had been fully complied with by the employer and its insurance carrier, the workmen's compensation commission was without jurisdiction of a claim for compensation made more than 3 years after the closing of the case. Carter v. Wrecking Corp. of Am., 234 Miss. 559, 107 So. 2d 116 (1958).

Adequate notice to claimant of the closing of his case is given by sending him a copy of a report on a form prescribed by the commission entitled Final Report and Settlement Receipt, notwithstanding error therein as to the period for which compensation had been paid and as to the date on which he was pronounced able to work. Carter v. Wrecking Corp. of Am., 234 Miss. 559, 107 So. 2d 116 (1958).

Code 1942, § 6998-27, which provides that the commission may, at any time prior to one year after the date of the last payment of compensation, review a compensation case, does not apply until there has been compliance with the mandatory provisions of subsection (g) of this section [Code 1942, § 6998-19]. Hale v. General Box Mfg. Co., 228 Miss. 394, 87 So. 2d 679 (1956).

It was not the intent of the legislature to require that there be a formal hearing by the commission in order to close employee's claim of voluntary payments, and the fact that no such hearing was held did not render statute inapplicable which limited period of commencement of suit for additional compensation to within one year after receipt of final payment. H.C. Moody & Sons v. Dedeaux, 223 Miss. 832, 79 So. 2d 225 (1955).

RESEARCH REFERENCES

ALR. Insurance carrier's liability for part of employer's liability attributable to violation of law or other misconduct on his part. 1 A.L.R.2d 407.

Workmen's compensation: crediting employer or insurance carrier with earnings of employee re-employed, or continued in employment, after injury. 84 A.L.R.2d 1108.

Postaccident conduct by employer, employer's insurer, or employer's employees in relation to workers' compensation claim as waiving, or estopping employer from asserting, exclusivity otherwise afforded by workers' compensation statute. 120 A.L.R.5th 513.

Am Jur. 82 Am. Jur. 2d, Workmen's Compensation §§ 607 et seq.

25 Am. Jur. Pl and Pr Forms (Rev), Workmen's Compensation, Forms 1 et seq.

CJS. 99 C.J.S., Workers' Compensation §§ 624 et seq.

101 C.J.S., Workers' Compensation §§ 1452-1455 et seq.

Law Reviews. 1982 Mississippi Supreme Court Review: Administrative Law: Workmen's Compensation. 53 Miss. L. J. 113, March 1983.

1984 Mississippi Supreme Court Review: Administrative Law. 55 Miss. L. J. 25, March, 1985.

Comment, Insurance Bad Faith in Mississippi, 55 Miss. L. J. 485, September 1985.

Practice References. Larson's Workers' Compensation Law (Matthew Bender).

§ 71-3-38. Special workers' compensation account for payment.

While acting as a self-insurer as authorized by Section 71-3-5, the state highway commission is authorized and empowered to establish and maintain, from funds made available upon requisition from the state treasury, a special workmen's compensation account, and to deposit such funds therein, and to pay therefrom the workmen's compensation benefits as authorized by Section 71-3-37, and to pay such awards as may be entered and such other costs, expenses and benefits as may be incidental to the settlement of such workmen's compensation claims. Disbursement from such special account shall be by check properly drawn against such account and signed by such personnel as may be duly authorized by the state highway commission. Payment from the special account shall be deemed payments of and from the State of Mississippi.

SOURCES: Laws, 1982, ch. 424; reenacted without change, Laws, 1990, ch. 405, § 20, eff from and after July 1, 1990.

Editor's Note — Chapter 408 of Laws of 1984 (§ 71-3-1) changed the title of the Workmen's Compensation Law to "Workers' Compensation Law" and provided that the words "workmen's compensation" shall mean "workers' compensation" and "commission" shall mean "workers' compensation commission".

§ 71-3-39. Recording and reporting of payments.

Every insurance company which transacts the business of compensation insurance and every employer who is subject to the workmen's compensation law, but who has not insured his liability, shall keep a record of all payments made under the provisions of this law, and of the time and manner of making such payments, and shall furnish such reports based upon these records to the workmen's compensation commission as it may require by general order, upon forms approved by the commission.

SOURCES: Codes, 1942, § 6998-20; Laws, 1948, ch. 354, § 14; reenacted without change, Laws, 1982, ch. 473, § 20; reenacted without change, Laws, 1990, ch. 405, § 21, eff from and after July 1, 1990.

Editor's Note — Chapter 408 of Laws of 1984 (§ 71-3-1) changed the title of the Workmen's Compensation Law to "Workers' Compensation Law" and provided that the words "workmen's compensation" shall mean "workers' compensation" and "commission" shall mean "workers' compensation commission."

§ 71-3-41. Invalid agreements.

No agreement by an employee to pay any portion of premium paid by his employer or to contribute to a benefit fund or department maintained by such employer for the purpose of providing compensation or medical services and supplies as required by this chapter shall be valid. Any employer who makes a deduction for such purpose from the pay of any employee entitled to the benefits of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than One Thousand Dollars ($1,000.00).

No agreement by an employee to waive his right to compensation under this law shall be valid.

SOURCES: Codes, 1942, § 6998-21; Laws, 1948, ch. 354, § 15; reenacted without change, Laws, 1982, ch. 473, § 21; reenacted without change, Laws, 1990, ch. 405, § 22, eff from and after July 1, 1990.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Successful settlement agreement with employer and co-employees on tort claim does not per se bar recovery of workers' compensation benefits, and such benefits were granted where liability carrier of employer, which was not same as employer's workers' compensation carrier, entered into settlement agreement with claimants to "buy its way out of a possible action at common-law," where settlement agreement entered into was in effect waiver of employer's right to defend common-law action on basis of exclusiveness of worker's compensation remedy. Sawyer v. Head, 510 So. 2d 472 (Miss. 1987).

Any agreement in the state in which one is hired to do work in Mississippi to waive his rights under the Mississippi Workmens' Compensation Law cannot operate to bar such rights. Harrison Co. v. Norton, 244 Miss. 752, 146 So. 2d 327 (1962).

RESEARCH REFERENCES

Am Jur. 82 Am. Jur. 2d, Workers' Compensation §§ 468.

CJS. 100 C.J.S., Workers' Compensation §§ 759, 762.

§ 71-3-43. Assignment and exemption from claims of creditors.

No assignment, release, or commutation of compensation or benefits due or payable under this chapter, except as provided by this chapter, shall be valid; and such compensation and benefits shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, which exemption may be waived. This section prevails over Sections 75-9-406 and 75-9-408 of Article 9 of the Uniform Commercial Code to the extent, if any, that these sections may otherwise be applicable.

SOURCES: Codes, 1942, § 6998-22; Laws, 1948, ch. 354, § 16; reenacted without change, Laws, 1982, ch. 473, § 22; reenacted without change, Laws, 1990, ch. 405, § 23; Laws, 2001, ch. 495, § 23, eff from and after Jan. 1, 2002.

Cross References — Levy of executions and attachments, see §§ 13-3-123 et seq.

Property exempt from execution or attachment generally, see §§ 85-3-1 et seq.

JUDICIAL DECISIONS

1. In general.

Imprisonment of a claimant who is already receiving permanent partial workers' compensation disability payments does not preclude the claimant from receiving those payments during the period of incarceration since permanent disability benefits are based upon a claimant's permanent loss of capacity to earn wages "at the time of injury"; moreover, the Workers' Compensation Act is silent as to what happens when a claimant who is entitled to permanent disability benefits is subsequently incarcerated, and § 71-3-43 seems to be an intent to protect the benefits for the injured party and implies that any deviation from payment to the claimant must be done by legislative act. Hardin's Bakery v. Taylor, 631 So. 2d 201 (Miss. 1994).

A trial judge in a homicide prosecution erred by ordering a claim against the defendant's workers' compensation benefits to secure payment of restitution since § 71-3-43 provides that workers' compensation benefits are exempt from all creditors' claims and from any remedy for recovery of a debt; moreover, under § 99-37-13, imposition of levy of execution for the collection of restitution is not authorized until the defendant is in default in his payment, and the defendant could not have been in default since the order of restitution was not yet enforceable where the defendant was also sentenced to imprisonment and the trial judge did not expressly find that he had assets to pay the amount ordered. Green v. State, 631 So. 2d 167 (Miss. 1994).

RESEARCH REFERENCES

ALR. Validity, construction, and effect of statutory exemptions of proceeds of workers' compensation awards. 48 A.L.R.5th 473.

Enforcement of claim for alimony or support, or for attorneys' fees and costs incurred in connection therewith, against exemptions. 52 A.L.R.5th 221.

Am Jur. 82 Am. Jur. 2d, Workers' Compensation § 9.

CJS. 100 C.J.S., Workers' Compensation §§ 730, 731.

§ 71-3-45. Compensation a lien against assets.

Any person entitled to compensation under the provisions of this chapter shall have a lien against the assets of the carrier or employer for such compensation without limit of amount, and shall, upon insolvency, bankruptcy, or reorganization in bankruptcy proceedings of the carrier or employer, or both, be entitled to preference and priority in the distribution of the assets of such carrier or employer, or both.

SOURCES: Codes, 1942, § 6998-23; Laws, 1948, ch. 354, § 17; reenacted without change, Laws, 1982, ch. 473, § 23; reenacted without change, Laws, 1990, ch. 405, § 24, eff from and after July 1, 1990.

Cross References — Enforcement of lien generally, see §§ 85-7-141 et seq.

JUDICIAL DECISIONS

1. In general.

A claim for workmen's compensation listed in bankruptcy proceedings as a debt of the employer may be barred by his discharge, although the claim was not adjudicated by the commission. Crum v. Dependents of Reed, 241 Miss. 111, 129 So. 2d 375 (1961).

RESEARCH REFERENCES

Am Jur. 82 Am. Jur. 2d, Workers' Compensation § 611.

CJS. 101 C.J.S., Workers' Compensation §§ 1464, 1467.

§ 71-3-47. Determination for claims for compensation.

Except as otherwise provided by this chapter, the details of practice and procedure in the settlement and adjudication of claims shall be determined by rules of the commission, the text of which shall be published and be readily available to interested parties.

The commission shall have full power and authority to determine all questions relating to the payment of claims for compensation. The commission shall make or cause to be made such investigation as it deems necessary and, upon application of either party or upon its own initiative, shall order a hearing, shall make or deny an award, and shall file the same in its office.

Informal conferences and hearings in contested cases may be conducted by a duly designated representative of the commission. Upon the conclusion of any such hearing, the commission's representative shall make or deny an award, and file the decision in the office of the commission. Immediately after such filing, a notice of decision shall be sent to all interested parties. This decision shall be final unless within twenty (20) days a request or petition for review by the full commission is filed.

SOURCES: Codes, 1942, § 6998-24; Laws, 1948, ch. 354, § 18; Laws, 1950, ch. 412, § 9; reenacted without change, Laws, 1982, ch. 473, § 24; reenacted without change, Laws, 1990, ch. 405, § 25, eff from and after July 1, 1990.

JUDICIAL DECISIONS

1. In general.
2. Jurisdiction of commission.
3. Attorney-referee.
4. Evidence, generally.
5. —Medical or expert testimony.
6. —Sufficiency.
7. — —Established.
8. — —Not established.
9. —Conflicting testimony.
10. Burden of proof.
11. Timeliness of petition.

1. In general.

In answering a certified question, the supreme court held that an award under Miss. Code Ann. § 71-3-47 referred to a final decision to grant or deny a specific amount of compensation. Thus, the employee's bad-faith claim against his employer was not time-barred as the administrative law judge's (ALJ) order had not yet determined the amount of compensation due; the order indicated that a final determination on the amount of compensation due the employee remained pending before the ALJ. Because the employee had substantial rights that remained undetermined and were specifically reserved for later action, the order was interlocutory, and the statute of limitations did not commence at that time. Bullock v. AIU Ins. Co., 995 So. 2d 717 (Miss. 2008).

No procedural invalidity existed where a commissioner wrote the factual summary for the administrative law judge as the judge wrote the fact-findings and legal conclusions, and the commissioner who wrote the summary recused herself from the appeal. Kitchens v. Jerry Vowell Logging, 874 So. 2d 456 (Miss. Ct. App. 2004).

An administrative law judge, as affirmed by the Workers' Compensation Commission and the circuit court, erred as a matter of law when he specifically stated that a hearing on an injured employee's motion to consider the need for additional medical treatment at the employer's expense under General Rule 9 was limited to whether the employee was suffering from improper medical treatment or lack of medical treatment, and then proceeded to make findings on maximum medical recovery and apportionment; an administrative law judge may not announce a limited purpose of a hearing, require the litigants to argue under limitation, and then decide the whole of the case including the time of maximum recovery apportionment and compensation. Monroe v. Broadwater Beach Hotel, 593 So. 2d 26 (Miss. 1992).

While the Administrative Judge is generally, within the Workers' Compensation Commission, the individual who conducts the hearing and hears the live testimony, the Commission itself is, in law, the finder of the facts, and on judicial review, the Commission's findings and decisions are subject to the normal deferential standards, notwithstanding the Administrative Judge's actions. Walker Mfg. Co. v. Cantrell, 577 So. 2d 1243 (Miss. 1991).

Injured worker's action for bad faith in payment of workers' compensation benefits may not proceed in federal court prior to final adjudication of underlying claim in accordance with state administrative procedures. Butler v. Nationwide Mut. Ins. Co., 712 F. Supp. 528 (S.D. Miss. 1989).

Decision that claimant is entitled to compensation for temporary disability is not res judicata on issue of continuing disability. International Paper Co. v. Wilson, 243 Miss. 659, 139 So. 2d 644 (1962).

Code 1942, §§ 6998-24 and 6998-28 do not require formal procedure or formal orders, and failure to accompany an order with a finding of fact is not fatal to its validity. Rivers Constr. Co. v. Dubose, 241 Miss. 527, 130 So. 2d 865 (1961).

2. Jurisdiction of commission.

Administrative law judge did not err in dismissing an employee's workers' compensation claim due to the employee's failure to move for reinstatement within one year under Miss. Code Ann. § 71-3-47; under § 71-3-47, the Mississippi Workers' Compensation Commission could establish the "practice and procedure" for the "adjudication of all claims." Edwards v. Wal-Mart, 930 So. 2d 1273 (Miss. Ct. App. 2006).

Claim of entitlement to worker's compensation benefits is matter within exclusive original jurisdiction of Mississippi Workers' Compensation Commission, and until petition before Commission is ruled upon, claimant's entitlement to tort damages cannot be determined by federal or state court. Dial v. Hartford Accident & Indem. Co., 863 F.2d 15 (5th Cir. 1989).

Jurisdiction was vested in the Workmen's Compensation Commission upon the claimant's filing her original two motions to contravert, and jurisdiction remained vested in the commission throughout the hearings conducted by an administrative judge and through the time when he issued his order, since jurisdiction of workmen's compensation claims is vested totally completely and exclusively in the commission and such jurisdiction cannot pass back and forth from the commission to an administrative judge inasmuch as an administrative judge is merely a facility of the commission. Day-Brite Lighting Div., Emerson Elec. Co. v. Cummings, 419 So. 2d 211 (Miss. 1982).

The commission has full power and authority to determine all questions relating to claims for compensation, including the authority to make such investigations as it deems necessary; it has specific authority to order medical examinations; and comprehensive judicial review of the commission's action is provided for. Everitt v. Lovitt, 192 So. 2d 422 (Miss. 1966).

The workmen's compensation commission is without jurisdiction to order the reformation of an insurance policy with a view to bringing a claimant within its coverage. Herrin v. Alan Wetzel Lumber Co., 244 Miss. 673, 145 So. 2d 690 (1962).

Where the fact of injury was sharply disputed and the evidence going thereto was in conflict, the issue was one for the commission. Davis v. Clark-Burt Roofing Co., 238 Miss. 464, 119 So. 2d 926 (1960).

The commission is the trier of the facts and had the right, and was under a duty, to evaluate the testimony of lay and medical witnesses and to base its findings upon the evidence as a whole. Mississippi Prods., Inc. v. Skipworth, 238 Miss. 312, 118 So. 2d 345 (1960).

Reopening of case to hearing of further evidence is within the commission's discretion. Druey v. Ingalls Shipbuilding Corp., 237 Miss. 277, 114 So. 2d 772 (1959).

Where the compensation carrier of a prime contractor had erroneously paid certain compensation payments to an injured employee of the subcontracting partnership, the commission, upon determining that the partnership, together with the compensation carrier of one of the members of the partnership, were liable for such benefits, erred in directing the partner's carrier to make duplicate compensation and medical expense payments to the employee; but correctly determined that it had no power to direct the partner's carrier to reimburse the prime contractor's carrier for payments erroneously made. United States Fid. & Guar. Co. v. Collins, 231 Miss. 319, 95 So. 2d 456

(1957), corrected, 231 Miss. 341, 96 So. 2d 456 (1957).

Where a claimant failed to appear at a commission hearing, after being given due notice, and the commission entered an order five days thereafter suspending the claimant's compensation payments, the workmen's compensation commission did not err in considering claimant's motion to reopen, filed within seven days after the entry of the order suspending payment but more than seven days after the date set for the hearing, since the commission could construe the motion as being timely and not inconsistent with a commission rule providing that if a justifiable excuse is presented for failure to attend the scheduled hearing within seven days after the date set therefor, a motion to reopen would be heard at the commission's discretion. Walker v. International Paper Co., 230 Miss. 95, 92 So. 2d 445 (1957).

Adoption as correct of the facts stated by the attorney-referee in his opinion and findings did not preclude the workmen's compensation commission from considering the facts stated by the attorney-referee, as well as other facts appearing in evidence and from the record as a whole, in determining whether or not there was a causal connection between the claimant's heart attacks and his work, and from determining, under conflicting evidence, that the claimant's injury was compensable, contra to the attorney-referee's findings. Ingalls Shipbuilding Corp. v. Dickerson, 230 Miss. 110, 92 So. 2d 354 (1957).

The workmen's compensation commission is the trier of facts in a workmen's compensation proceeding; not the attorney-referee. Malley v. Over The Top, Inc., 229 Miss. 347, 90 So. 2d 678 (1956); Ingalls Shipbuilding Corp. v. Dickerson, 230 Miss. 110, 92 So. 2d 354 (1957); Pascagoula Crab Co. v. Holbrooks, 230 Miss. 833, 94 So. 2d 233 (1957); Valley Dry Goods Co. v. Odom, 244 Miss. 125, 141 So. 2d 254 (1962).

3. Attorney-referee.

The findings of the attorney-referee are not analogous to the findings of a master in chancery. Moon's Dependents v. Erwin Mills, Inc., 244 Miss. 573, 145 So. 2d 465 (1962).

Decision of full commission denying compensation must be sustained where supported by substantial evidence, although contrary determination by attorney-referee is also supported by substantial evidence. United Funeral Homes, Inc. v. Culliver, 240 Miss. 878, 128 So. 2d 579 (1961).

The attorney-referee is an arm or facility of the commission to find the facts. Komp Equip. Co. v. Clinton, 236 Miss. 569, 112 So. 2d 541 (1959).

A conflict in medical testimony, as to whether an accidental burn suffered by the claimant while engaged in his duties, together with the resultant anticipated treatment thereof, was causally related to and precipitated the claimant's heart attack, only made an issue of fact to be decided by the attorney-referee and the commission. Harper Foundry & Mach. Co. v. Harper, 232 Miss. 873, 100 So. 2d 779 (1958).

The attorney-referee did not err in closing the hearing upon motion, where the claimant had failed to appear at a date set for a recessed hearing, in the absence of claimant's showing that witnesses he desired had been subpoenaed or could be produced as witnesses, or that any effort had been made to produce them, and there was no showing made as to what such witnesses would testify, if present. Thompson v. Armstrong Cork Co., 230 Miss. 730, 93 So. 2d 831 (1957).

The attorney-referee is no more than a facility for conducting the business of the commission, and for all practical purposes the commission is the actual trier of facts. Railway Exp. Agency v. Hollingsworth, 221 Miss. 688, 75 So. 2d 639 (1954).

4. Evidence, generally.

A death certificate listing cause of death as bronchio-alveolar carcinoma was prima facie proof of primary cause of Workers' Compensation claimant's death. Sonford Prods. Corp. v. Freels, 495 So. 2d 468 (Miss. 1986), overruled on other grounds, Bickham v. Department of Mental Health, 592 So. 2d 96 (Miss. 1991).

The Workers' Compensation Commission, within legal limits, is the sole judge of the weight and sufficiency of the evidence. Evidence which is not contradicted by positive testimony or circumstances, and which is not inherently improbable, incredible, or unreasonable, cannot, as a matter of law, be arbitrarily or capriciously discredited, disregarded or rejected, even though the witness is a party or is interested; unless uncontradicted evidence is shown to be untrustworthy, it is to be taken as conclusive and binding on the triers of fact. Morris v. Lansdell's Frame Co., 547 So. 2d 782 (Miss. 1989).

The statutes presuppose generally a full hearing on the merits and a claim should not be dismissed until all evidence pertinent to the issues has been heard, and where testimony of doctors was vital to claimant's case, the commission should not have arbitrarily dismissed claim without hearing this testimony. Day Detectives, Inc. v. Savell, 291 So. 2d 716 (Miss. 1974).

The commission's finding will not be disturbed on appeal if supported by substantial evidence. Moon's Dependents v. Erwin Mills, Inc., 244 Miss. 573, 145 So. 2d 465 (1962).

Unless denial of compensation is based on matters which are jurisdictional or in abatement, the compensation commission ordinarily should not grant a motion to dismiss where it has not heard all the pertinent evidence. Scott Builders, Inc. v. Layton's Dependent, 244 Miss. 641, 145 So. 2d 165 (1962).

On a motion to dismiss a workmen's compensation proceeding on the pleadings and claimant's evidence, facts tendered by the claimant must be accepted as true and all reasonable inferences therefrom be resolved in claimant's favor. Scott Builders, Inc. v. Layton's Dependent, 244 Miss. 641, 145 So. 2d 165 (1962).

Where the evidence as to whether employee was injured in accident arising out of and in course of his employment was conflicting, but the great weight of the evidence was against employee's contentions, the court would not disturb the finding by the commission that the employee was not injured in the course of employment. Shepard v. Paramount Theatre, 144 So. 2d 502 (Miss. 1962).

Since a claim for disability is separate and distinct from a claim for death benefits, the 1960 amendment to subsection (9) of Code 1942, § 6998-02, requiring that incapacity be proved by medical findings, did not eliminate from the application of the Workmen's Compensation Law of the presumption of causal connection between the employment and death occurring while the employee is engaged in the duties of his employment. L.B. Priester & Son v. Bynum's Dependents, 244 Miss. 196, 142 So. 2d 30 (1962), overruled on other grounds, Wilson v. Mississippi Emp. Sec. Comm'n, 643 So. 2d 538 (Miss. 1994).

The evidence failed to establish claimant's claim that his hands were infected as a result of having stacked lumber which had been sprayed with a "chemical dip," and there was nothing in the record requiring reversal. Nelson v. Dickerson Sawmill, 140 So. 2d 567 (Miss. 1962).

Proof to establish a claim may be circumstantial. El Patio Motor Court, Inc. v. Long's Dependents, 242 Miss. 294, 134 So. 2d 437 (1961).

Evidence which is uncontradicted or undisputed should ordinarily be taken as true, if it is not inherently improbable or unreasonable, and cannot be arbitrarily disregarded. Shivers v. Biloxi-Gulfport Daily Herald, 236 Miss. 303, 110 So. 2d 359 (1959).

The commission is entitled to consider all evidence contained in the record before it, including statement given by claimant to insurance carrier. Ray v. Wells-Lamont Glove Factory, 236 Miss. 154, 109 So. 2d 544 (1959).

Previous good health before injury and subsequent impairment of ability to work, indicates that injury was the cause of disability. Hale v. General Box Mfg. Co., 235 Miss. 301, 108 So. 2d 844 (1959).

A back injury attributable to walking on crutches while recovering from a foot injury is properly excluded from consideration in awarding compensation, where it is not manifest that claimant's movements were part of the necessary treatment of the foot injury. Machine Prods. Co. v. Wilemon, 234 Miss. 596, 107 So. 2d 114 (1958).

5. —Medical or expert testimony.

Employee's claim that her former employer acted in bad faith in denying workers' compensation benefits under Miss. Code Ann. § 71-3-7, which benefits the employee later received via a settlement, failed because the employer had arguable reasons for its decision where an investigation into whether the employee's alleged sexual relationship with her manager ever occurred or was cause of the employee's mental health problems was inconclusive; that the employer failed to offer a medical expert under Miss. Code Ann. § 71-3-47 to refute the opinions of the employee's experts at the workers' compensation hearing was inconsequential because even without medical testimony, the employer's arguable reasons for denying the employee's claim were solid, and medical testimony would not have made this any less of a "he said, she said" dispute. Hood v. Sears Roebuck & Co., 532 F. Supp. 2d 795 (S.D. Miss. June 23, 2005), affirmed by 247 Fed. Appx. 531, 2007 U.S. App. LEXIS 21978 (5th Cir. Miss. 2007).

Workers' Compensation Commission erred in holding that the claimant was not permanently disabled because the Commission improperly relied on the opinions of nontreating doctors, who had not examined the claimant in two years, and the opinion of a vocation rehabilitation consultant that stated there was the "possibility" that the claimant could perform sedentary jobs, which was speculative and not supported by the facts in evidence that showed the claimant's treating physician never stated that the claimant could perform sedentary jobs but rather he insisted that she was permanently disabled and rejected such jobs. Recovery in a compensation case must be based on probabilities, rather than predicated only upon a possibility, and the claimant was not required to go against her treating physician's medical advice and seek employment. Stewart v. Singing River Hosp. Sys., 928 So. 2d 176 (Miss. Ct. App. 2005), writ of certiorari denied by 929 So. 2d 923, 2006 Miss. LEXIS 242 (Miss. 2006).

A doctor's inability to pinpoint the exact physical cause of an employee's disability did not alone defeat the employee's claim for compensation, given the beneficent purpose of the Workers' Compensation Act, where there was uncontradicted testimony that the employee was injured while performing his job and that he was totally and permanently disabled. Trest v. B.C. Rogers Processors, Inc., 592 So. 2d 110 (Miss. 1991).

Certainty is not a requisite in deciding a workers' compensation case, but, rather, the reviewing court considers reasonable medical probabilities. In other words, medical findings sufficient to show a compensable disability are not required to be precise, complete and unequivocal. Georgia-Pacific Corp. v. Gregory, 589 So. 2d 1250 (Miss. 1991).

Compensation may be allowed for disabling pain in the absence of positive medical testimony as to any physical cause whatever. When the patient complains of pain, the doctor usually takes the fact of pain for granted and the absence of physical findings to account for the pain will not necessarily bar compensation. In such cases, evidence of an accident followed by disabling pain and the absence of evidence as to the cause of the pain from objective medical findings may be sufficient as a basis for compensation, in the absence of circumstances tending to show malingering or indicating that the claimant's testimony as to pain is inherently improbable, incredible, unreasonable or untrustworthy. However, there is a great potential for abuse in claims which are based predominantly upon pain reported by the patient, particularly in circumstances where the patient's testimony or statement to the physician is the sole evidence of its continued presence. In these cases, it would be prudent to obtain additional medical evidence to either support or dispute the claim. Morris v. Lansdell's Frame Co., 547 So. 2d 782 (Miss. 1989).

Medical testimony is required only to support the fact of incapacity and the extent of such incapacity. Marshall Durbin, Inc. v. Hall, 490 So. 2d 877 (Miss. 1986).

Disability determination must be supported by medical evidence. Delta Drilling Co. v. Cannette, 489 So. 2d 1378 (Miss. 1986).

Worker's Compensation Commission's order would not be overturned because it allowed claimant to reopen case to present further medical evidence. Delta Drilling Co. v. Cannette, 489 So. 2d 1378 (Miss. 1986).

In a case where it was alleged that exposure to toxic chemicals at his workplace precipitated claimant's lung cancer and ultimate death, a toxicologist qualified as an expert to give an opinion regarding the causal relationship between the decedent's workplace and his fatal condition, and his expert testimony provided a reasonable basis for concluding that exposure to chemicals at the workplace was a substantial factor in bringing about death of claimant. Sonford Prods. Corp. v. Freels, 495 So. 2d 468 (Miss. 1986), overruled on other grounds, Bickham v. Department of Mental Health, 592 So. 2d 96 (Miss. 1991).

Disability upon which workman's compensation may be based need not be proved by medical testimony as long as there is medical testimony which will support finding of disability. Hall of Mississippi, Inc. v. Green, 467 So. 2d 935 (Miss. 1985).

In heart attack cases, where the claimant lives, no presumption of causal relation arises out of the fact that employee was engaged in his usual duties at his place of employment at the time of the onset of the attack; the claimant has the burden of proving that heart attack was causally related to his employment; and the evidence with respect to causal relation must include medical testimony supportive thereof. Day Detectives, Inc. v. Savell, 291 So. 2d 716 (Miss. 1974).

Where there was no substantial disagreement in the testimony of medical witnesses, commission was warranted in concluding that since the employee, whose death was caused by coronary occlusion, collapsed before he had begun the duties of his employment on morning in question and that he had had three days of rest and relaxation immediately prior thereto, that there was no causal relation between his activities as an employee and his death. Itawamba Mfg. Co. v. Christian's Dependents, 244 Miss. 587, 145 So. 2d 161 (1962).

Medical and other evidence concerning the extent of the injuries has no bearing on the issue as to whether employee's injury arose out of and in the course of his employment. Shepard v. Paramount Theatre, 144 So. 2d 502 (Miss. 1962).

Evidence of lay witnesses as to the extent of disability supported award, notwithstanding medical evidence of less disability. McManus v. Southern United Ice Co., 243 Miss. 576, 138 So. 2d 899 (1962).

The commission gives great weight to medical evidence in determining loss of wage-earning capacity, but is not conclusively bound thereby. The extent of such loss must be ascertained from the evidence as a whole. Hale v. General Box Mfg. Co., 235 Miss. 301, 108 So. 2d 844 (1959).

Medical testimony is not essential to establish prima facie the cause and effect of a claimed injury. Marley Constr. Co. v. Westbrook, 234 Miss. 710, 107 So. 2d 104 (1958).

In all but simple cases medical causation must be established by expert testimony. Cole v. Superior Coach Corp., 234 Miss. 287, 106 So. 2d 71 (1958).

A conflict in medical testimony, as to whether an accidental burn suffered by the claimant while engaged in his duties, together with the resultant anticipated treatment thereof, was causally related to and precipitated the claimant's heart attack, only made an issue of fact to be decided by the attorney-referee and the commission. Harper Foundry & Mach. Co. v. Harper, 232 Miss. 873, 100 So. 2d 779 (1958).

Commission, on review following the decision of the attorney-referee, did not err in refusing to admit in evidence the deposition of one of the doctors who had testified before the attorney-referee, expressing the doctor's opinion that he was more of an expert on cancer than another doctor who had likewise testified at the hearing. Dixie Pine Prods. Co. v. Dependents of Bryant, 228 Miss. 595, 89 So. 2d 589 (1956).

6. —Sufficiency.

Claimant's appeal of the denial of workers' compensation benefits was properly dismissed by the Mississippi Workers' Compensation Commission because the appeal was filed outside of the 20 days allowed by Miss. Code Ann. § 71-3-47 and because the claimant's reasons for her tardiness including a family emergency were insufficient. Roberson v. LFI Fort Pierce, Inc., 3 So. 3d 788 (Miss. Ct. App. 2008), writ of certiorari denied by 11 So.

3d 1250, 2009 Miss. LEXIS 99 (Miss. 2009).

Employee proved by preponderance of evidence that his employer did not carry workers' compensation, as required for every employer with five or more employees. James M. Burns Lumber Co. v. Dilworth, 676 So. 2d 892 (Miss. 1996).

A finding by the Workers' Compensation Commission that an injured manual laborer who was restricted by his doctor to lifting less than 40 pounds suffered only minimal industrial incapacity was not supported by substantial evidence where the decision was based largely on an alleged policy of the employer requiring workers to seek assistance when lifting more than 40 pounds, but the record contained no evidence of such a policy. DeLaughter v. South Cent. Tractor Parts, 642 So. 2d 375 (Miss. 1994).

The Workers' Compensation Commission's denial of benefits to an asthmatic employee would be reversed, even though a physician testified that there was not a "strong work-related causal connection between [the employee's] pneumonia and emphysema," where medical testimony established a causal connection between the exacerbation of her pre-existing respiratory problems and the inhalation of irritants in her work environment, and the employee's uncontroverted testimony of the onset pain in her side and back along with shortness of breath while she was performing her job duties established that her injury arose out of and in the course of her employment. Hedge v. Leggett & Platt, Inc., 641 So. 2d 9 (Miss. 1994).

A finding by the Workers' Compensation Commission that a lumberyard worker had sustained only a 50 percent loss of wage-earning capacity, and therefore suffered only partial rather than total permanent disability, would be reversed where the evidence indicated that he had difficulty performing "make-work" tasks at his employer's lumberyard after he returned to work and that his efforts to find other employment were unsuccessful, and the Commission's finding was based on the conclusion that the employee should have been able to secure "some type of gainful employment" merely because he had a high school education. Barnes v. Jones Lumber Co., 637 So. 2d 867 (Miss. 1994).

The circuit court did not err in reversing the Workers' Compensation Commission's finding that a claimant with a back injury had reached maximum medical improvement and suffered no permanent disability where there was evidence that the claimant had 2 ruptured discs surgically removed, specialists who initially concluded that the claimant had no ruptured discs did not later examine him after the discovery of the ruptured discs was made, and the employer failed to show that the claimant suffered any disassociated intervening injury which caused the ruptured discs, their surgical removal and the resulting disability. Marshall Durbin Cos. v. Warren, 633 So. 2d 1006 (Miss. 1994).

Substantial evidence supported finding by Worker's Compensation Commission that claimant's finger injury for which he had earlier been compensated was not a latent injury, and that a claim for further benefits was barred by statute of limitations. Benoist Elevator Co. v. Mitchell, 485 So. 2d 1068 (Miss. 1986).

It is the finding of the commission, not that of the attorney-referee, to which the test of substantial evidence is applied. Johnson v. Pearl River Sand & Gravel Co., 242 Miss. 349, 134 So. 2d 434 (1961).

Findings of the commission, either in allowing or denying compensation, must be supported by substantial evidence. Rivers Constr. Co. v. Dubose, 241 Miss. 527, 130 So. 2d 865 (1961).

The commission's determination is conclusive if supported by substantial evidence. Parker v. United Gas Corp., 240 Miss. 351, 127 So. 2d 438 (1961).

7. — —Established.

The evidence was sufficient to support the Workers' Compensation Commission's finding that a claimant's hypertension was work-related, thus obliging the claimant's former employer to pay for medical expenses incurred by the claimant for periodic checkups for his hypertensive condition as ordered by his treating physician, where the claimant began to experience tension, anxiety and stomach problems, which the physician diagnosed as hypertension, during the time the claimant worked for the employer, and the physician concluded that the claimant's job caused him to experience significant stress which aggravated his hypertensive condition so as to require him to take a medical leave of absence. Berry v. Universal Mfg. Co., 597 So. 2d 623 (Miss. 1992).

The evidence was sufficient to support the Workers' Compensation Commission's finding that an employee's mental disability was caused by a deliberate course of conduct by his employer and that there was nothing in his psychological background to suggest a pre-existing personality disorder, so that the stresses to which the employee was subjected were "more than the ordinary incidents of employment" and were "untoward events or unusual occurrences" culminating in his subsequent disability, where a psychiatrist who treated the employee for over 2 years testified that the employee was psychologically disabled and that his work played a significant part in causing it, and testimony from the employee, the employee's wife, and fellow employees established a protracted pattern by the employer to put pressure and stress upon the employee. Borden, Inc. v. Eskridge, 604 So. 2d 1071 (Miss. 1991).

The evidence was sufficient to support a finding by the Workers' Compensation Commission that noise at an employee's work site was a contributing, precipitating, or aggravating factor in the production of Meniere's Syndrome, even though the etiology of Meniere's Syndrome is largely unknown, where there was substantial evidence that exposure to high intensity noise for a period of years at the work site contributed to, aggravated or accelerated the employee's condition, and this evidence was not controverted by any direct medical evidence. Georgia-Pacific Corp. v. Gregory, 589 So. 2d 1250 (Miss. 1991).

There was substantial evidence supporting a finding by the Workers' Compensation Commission that a claimant's impairment was a whole body injury rather than a schedule numbered injury only, where a physician identified the claimant's malady as Meniere's Syndrome, and he testified that Meniere's Syndrome is "an inner ear dysfunction that appears to be lifelong in nature" and that it affected the entire body in that, in addition to a loss of hearing, it involved a balance dysfunction affecting the claimant's activities of daily living, both occupationally and socially. Georgia-Pacific Corp. v. Gregory, 589 So. 2d 1250 (Miss. 1991).

The evidence supported a finding that an employee suffered a 100 percent industrial loss of use of his left leg, rather than only a 40 percent loss, even though the employee's treating physician testified that the employee had a 40 percent permanent partial impairment of his left leg, where the physician also testified that the employee would be limited in activities such as standing for long periods, climbing ladders and stairs, and carrying heavy loads but that he could work in sedentary types of positions where he could sit to do the work, the employee was a 43-year-old man who dropped out of school during the 10th grade, from that time until the time of his injury he worked in construction, did carpentry work, and delivered furniture, at the time of the injury he was employed at a furniture company where he did not perform any one particular job but was moved around from job to job as needed, some of the jobs that he performed at the company included working in the sanding department, cutting out chest-of-drawer tops, and working in the mill, the employee testified that after his injury he could not do carpentry work and could not do any jobs which required him to stand but he could sand edges and use a table saw, and he testified that he continued to have problems with his leg every day, including swelling and pain. McGowan v. Orleans Furn., Inc., 586 So. 2d 163 (Miss. 1991).

The evidence was sufficient to support a finding of July 8, 1988, as the date of an employee's maximum medical recovery from a leg injury, where the employee's treating physician had initially indicated that the employee had reached maximum medical recovery on August 27, 1987 when he was originally released to return to work, but the physician subsequently stated that the employee did not reach maximum medical recovery until July 8, 1988 because the employee continued to suffer from swelling and pain following the August release and the physician continued reassessment and treatment in the hope that the employee's condition would improve. McGowan v. Orleans Furn., Inc., 586 So. 2d 163 (Miss. 1991).

The Workers' Compensation Commission's findings that a truck driver sustained a compensable injury and that the repeated trauma of his work aggravated a pre-existing non-work-related condition were supported by substantial evidence where the worker's treating physician and the physician for the employer who conducted a physical examination required by the Department of Transportation had released the worker to return to work following treatment for a non-work-related back injury and the treating physician testified that the worker had a "chronically sore joint in the back that was apparently being aggravated by the nature of his work as a long-distance truck driver." Miller Transporters, Inc. v. Guthrie, 554 So. 2d 917 (Miss. 1989).

In a case where it was alleged that exposure to toxic chemicals at his workplace caused claimant's lung cancer and ultimate death, a prima facie case of compensability was established by toxicologist's testimony that within a 90-95 percent probability, bronchio-alveolar carcinoma, is caused by exposure to chemicals; death certificate listing claimant's cause of death as bronchio-alveolar carcinoma; lay testimony of claimant establishing his daily exposure to chemicals, a weight loss, shortness of breath, and operation for removal of lung lesions; and lay testimony of claimant's wife as to the absorption of chemicals on claimant's clothes, on the onset of symptoms described by claimant, and his ultimate death. Sonford Prods. Corp. v. Freels, 495 So. 2d 468 (Miss. 1986), overruled on other grounds, Bickham v. Department of Mental Health, 592 So. 2d 96 (Miss. 1991).

Worker's Compensation Commission's findings that employee suffered permanent, total occupational disability and that apportionment was not required because of employee's pre-existing condition, was amply supported by employee's testimony and by medical evidence. Marshall Durbin, Inc. v. Hall, 490 So. 2d 877 (Miss. 1986).

Worker's Compensation Commission's finding that claimant had suffered a work-related injury, and was occupationally disabled as a result thereof, was sustained by medical and lay evidence. Delta Drilling Co. v. Cannette, 489 So. 2d 1378 (Miss. 1986).

Testimony of 2 physicians as to their examination of claimant provided substantial evidence needed to support Worker's Compensation Commission's denial of claimant's motion to remand her case to administrative law judge for consideration of additional benefits. Georgia-Pacific Corp. v. Veal, 484 So. 2d 1025 (Miss. 1986).

Medical testimony that workman's compensation claimant has suffered 15 percent permanent anatomical disability, combined with testimony of claimant and corroborating witnesses that claimant is unable to perform any task involving physical exertion and that claimant is plagued by pain is sufficient to establish claimant's disability. Hall of Mississippi, Inc. v. Green, 467 So. 2d 935 (Miss. 1985).

Testimony of workmen's compensation claimant as to inability to perform job, as to continuing suffering and pain and limitations on mobility and as to inability to find other work is sufficient to support finding of 100 percent industrial disability, notwithstanding testimony of treating physician that claimant has suffered 20 percent partial disability. Piggly Wiggly v. Houston, 464 So. 2d 510 (Miss. 1985).

The commission should not dismiss a claim at the close of the claimant's evidence, where the case is a close one and all the facts have not been developed. Scott Builders, Inc. v. Layton's Dependent, 244 Miss. 641, 145 So. 2d 165 (1962).

Commission's finding, that heart attack sustained by a radio station employee faced with increasing competition was not connected with his employment, held sustained by substantial evidence. Capital Broadcasting Co. v. Wilkerson, 240 Miss. 64, 126 So. 2d 242 (1961).

Conflicting evidence sustained decision of the commission denying benefits to a night watchman who claimed that he had sustained a fall and injury which resulted in varicose veins in his left leg. Tanner v. American Hdwe. Corp., 238 Miss. 612, 119 So. 2d 380 (1960).

Medical evidence, and testimony of claimant and that of her two coemployees, supported commission's finding that claimant was temporarily totally disabled at the time of a hearing, and that her disability was due to a new back injury which aggravated the prior existing physical impairment. Fair Stores v. Bryant, 238 Miss. 434, 118 So. 2d 295 (1960).

Workmen's compensation commission's finding that there was no causal connection between claimant's disability and the injury which occurred in the course of her employment was supported by substantial evidence, including physicians' testimony fairly demonstrating that neither the injury nor the operation was the probable cause of the disabling pain and further showing that a preexisting disease, revealed by a pelvic examination, was the probable cause of the pain. Malley v. Over The Top, Inc., 229 Miss. 347, 90 So. 2d 678 (1956).

In an action under Workmen's Compensation Law to recover death benefits for a member of a drilling crew whose body was found near the ditch he had been digging, evidence that decedent had complained of pains in chest while moving heavy planks prior to digging a ditch was sufficient to sustain a finding that death resulted from accidental injury arising out of and in the course of employment, despite the fact that there was medical testimony that decedent died of a heart attack. Sunnyland Contracting Co. v. Davis, 221 Miss. 744, 74 So. 2d 858 (1954), corrected, 221 Miss. 744, 75 So. 2d 923 (1954).

8. — —Not established.

The evidence was sufficient to support a finding that a claimant suffered only a 5 percent permanent partial occupational disability by reason of a work-connected injury to his left hand, where the claimant failed to offer evidence that he had unsuccessfully attempted to perform his usual duties, and he failed to offer evidence that he was refused employment based upon the disability to his hand in that he made no search for work outside his prior employment, stating that his car had been repossessed and he was without transportation. Walker Mfg. Co. v. Cantrell, 577 So. 2d 1243 (Miss. 1991).

A claimant who suffered a 25 percent permanent impairment to the body was not entitled to an award of permanent partial disability benefits since she did not establish a loss of wage earning capacity attributable to the compensable injury, where the evidence showed that she experienced an overall increase of post-injury wages and she offered no proof to rebut the presumption of no loss of wage earning capacity by showing that the post-injury earnings were not reliable in determining wage earning capacity. International Paper Co. v. Kelley, 562 So. 2d 1298 (Miss. 1990).

Decision of Workmen's Compensation Commission awarding benefits on basis of alleged back injury will be reversed on judicial review on basis of lack of sufficient evidence where only testimony regarding injury is that of claimant and those claimant informed, initial medical consultation for injury is almost full year after injury, and claimant's conduct after injury is so inconsistent with that of employee injured in course of employment as to cause loss of credibility. Hudson v. Keystone Seneca Wire Cloth Co., 482 So. 2d 226 (Miss. 1986).

A showing of mere possibility that death from heart trouble, after termination of employment, is connected with the employment, is not sufficient. Franks v. Goyer Co., 234 Miss. 833, 108 So. 2d 217 (1959).

9. —Conflicting testimony.

A finding that a claimant was not entitled to permanent disability benefits because his disability, which arose from slippage in the spine, was attributable entirely to preexisting spondylolisthesis was not supported by substantial evidence where there was conflicting medical testimony from 2 treating physicians as to the cause of the claimant's permanent disability and neither physician could determine how and when the slippage actually occurred, since close questions of compensability should be resolved in favor of the claimant, and the Workers' Compensation Act should be liberally construed to carry out its remedial purpose. McNeese v. Cooper Tire & Rubber Co., 627 So. 2d 321 (Miss. 1993).

Even if medical testimony was in conflict, the findings of the workmen's compensation commission, that the permanent total disability of an employee who had sustained a heart attack had no causal connection with his work, was supported by substantial evidence. Babcock & Wilcox Co. v. Roby, 246 Miss. 160, 150 So. 2d 129 (1963).

Although the testimony was conflicting, there was substantial evidence to sustain finding of workmen's compensation commission against claimant's contention that her injuries had been sustained while on the job. Duck v. Liberty Mills, Inc., 246 Miss. 434, 149 So. 2d 849 (1963).

Commission finding that the father and two minor brothers were totally dependent upon the deceased employee at the time of his death was supported by evidence showing that the deceased employee had furnished money and supplies for the support of his two minor brothers and of his father who was in poor health and had not been gainfully employed during the two years next prior to the father's death. Truck Trailer Sales & Serv. Co. v. Moore, 244 Miss. 317, 141 So. 2d 541 (1962).

Where the claimant lost no time from work following time of alleged injury for a period of nearly two months, medical and lay testimony, although conflicting, sustained commission's denial of benefits for an alleged ruptured intervertebral disc causing disablement. Allen v. Westinghouse Elec. Co., 118 So. 2d 869 (Miss. 1960).

Although conflicting, lay and medical testimony supported finding of commission that claimant's anxiety neurosis did not result from accidental injury and trial court erred in setting aside the findings and award of the commission. Mississippi Prods., Inc. v. Skipworth, 238 Miss. 312, 118 So. 2d 345 (1960).

10. Burden of proof.

A circuit court judgment affirming the Workers' Compensation Commission's denial of benefits to a deceased employee's children was not supported by substantial evidence and would be reversed where the onset of the employee's death occurred at her place of employment and the employer failed to rebut the presumption that the employee's work activities did not cause or contribute to the condition from which she died; the unrebutted "found dead" legal presumption prevailed, satisfying the causal connection between the employee's work duties and the condition which resulted in her death. Nettles v. Gulf City Fisheries, Inc., 629 So. 2d 554, 47 A.L.R.5th 977 (Miss. 1993).

When a claimant, having reached maximum medical recovery, reports back to his or her employer for work, and the employer refuses to reinstate or rehire the claimant, then it is prima facie that the claimant has met his or her burden of showing total disability; the burden then shifts to the employer to prove a partial disability or that the claimant has suffered no loss of wage earning capacity. Jordan v. Hercules, Inc., 600 So. 2d 179 (Miss. 1992), but see Dulaney v. National Pizza Co., 733 So. 2d 301 (Miss. Ct. App. 1998).

In order to establish industrial disability, the burden is upon the claimant to prove medical impairment and that the medical impairment resulted in a loss of wage-earning capacity. Robinson v. Packard Elec. Div., GMC, 523 So. 2d 329 (Miss. 1988).

When a claimant seeks compensation benefits for disability resulting from a mental or psychological injury, the claimant has the burden of proving by clear and convincing evidence the connection between the employment and the injury. Fought v. Stuart C. Irby Co., 523 So. 2d 314 (Miss. 1988).

Since there is no statutory requirement as to a cross-appeal, the Commission is free to adopt whatever rule it deems feasible on cross-appeals by a party, and, having apparently promulgated none thus far, was clearly within its authority in considering the cross-appeal of a claimant, even though filed considerably more than 20 days following the decision of the administrative law judge. Staple Cotton Servs. Ass'n v. Russell, 399 So. 2d 224 (Miss. 1981).

In heart attack cases, where the claimant lives, no presumption of causal relation arises out of the fact that employee was engaged in his usual duties at his place of employment at the time of the onset of the attack; the claimant has the burden of proving that heart attack was causally related to his employment; and the evidence with respect to causal relation must include medical testimony supportive thereof. Day Detectives, Inc. v. Savell, 291 So. 2d 716 (Miss. 1974).

While the burden of proof is on the claimant, there is created a rebuttable presumption of work connection in the case of an unexplained death while on the job. L.B. Priester & Son v. Bynum's Dependents, 244 Miss. 196, 142 So. 2d 30 (1962), overruled on other grounds, Wilson v. Mississippi Emp. Sec. Comm'n, 643 So. 2d 538 (Miss. 1994).

The burden of establishing a claim is upon the employees. Valley Dry Goods Co. v. Odom, 244 Miss. 125, 141 So. 2d 254 (1962).

The burden is on claimant to show a causal connection between an injury and the claimed disability. Potts v. Lowery, 242 Miss. 300, 134 So. 2d 474 (1961).

The burden of proof is upon the claimant. Capital Broadcasting Co. v. Wilkerson, 240 Miss. 64, 126 So. 2d 242 (1961).

When an employer's motor vehicle is being driven by an employee, it is presumed to be on the employer's business, and the burden is on the employer to prove that it was being driven on a route which the employee's duties did not require him to take. Wilson Furn. Co. v. Wilson, 237 Miss. 512, 115 So. 2d 141 (1959).

Burden of proof is upon claimant to show causal connection between his work and his injury or death. Druey v. Ingalls Shipbuilding Corp., 237 Miss. 277, 114 So. 2d 772 (1959).

Burden is on one claiming death benefits to prove that work of deceased employee contributed to his death. Winters Hardwood Dimension Co. v. Harris' Dependents, 236 Miss. 757, 112 So. 2d 227 (1959).

The burden is on claimant to establish beyond speculation and conjecture an employer-employee relationship and that the injury or death arose out of and in the course of employment. Erwin v. Hayes, 236 Miss. 123, 109 So. 2d 156 (1959).

Where an accident arising out of and in the course of the employment is shown, the burden is on the employer to prove that disability is due to some cause for which he is not responsible. Hale v. General Box Mfg. Co., 235 Miss. 301, 108 So. 2d 844 (1959).

The burden of proof is on the claimant to show causal connection between the employment and injury. Sullivan v. C. & S. Poultry Co., 234 Miss. 126, 105 So. 2d 558 (1958).

The employee has an overall burden of proving facts prerequisite to recovery in every case. T.H. Mastin & Co. v. Mangum, 215 Miss. 454, 61 So. 2d 298 (1952).

11. Timeliness of petition.

Employee's petition for review was properly dismissed by the Mississippi Workers' Compensation Commission as untimely under Miss. Code Ann. § 71-3-47 because the employee filed the petition 21 days after the initial decision. Employee admitted that she mailed the petition on the last day it should have been filed. Ford v. KLLM, Inc., 909 So. 2d 1194 (Miss. Ct. App. 2005).

Employee's petition for review was properly dismissed by the Mississippi Workers' Compensation Commission as untimely under Miss. Code Ann. § 71-3-47 because the employee filed the petition 21 days after the initial decision. Employee admitted that she mailed the petition on the last day it should have been filed. Ford v. KLLM, Inc., 909 So. 2d 1194 (Miss. Ct. App. 2005).

It is a well-recognized proposition of law that if petition for review is not filed within 20 days then action is barred since § 71-3-47 is jurisdictional; however a claimant's motion for the commission to withdraw attorney-referee's order denying his claim tolls running of 20-day time within which petition for review by full commission should be filed. Day Detectives, Inc. v. Savell, 291 So. 2d 716 (Miss. 1974).

Where the petition for review was not filed within 20 days, the action is barred since this section [Code 1942, § 6998-24] is jurisdictional. Scales v. Barry, 195 So. 2d 920 (Miss. 1967).

If, by the exclusion of the first day of the period in which a compensation claimant must file notice of appeal from decision of the workmen's compensation commission's representative, the last day of the computation falls on Sunday, then the first day is counted and the last day is excluded, and by following this formula where the compensation commission's office is open for business on Saturdays until noon, a petition for review could not have been timely filed later than the date of the Saturday preceding the Sunday which constituted the 20th day. Scales v. Barry, 195 So. 2d 920 (Miss. 1967).

RESEARCH REFERENCES

Am Jur. 82 Am. Jur. 2d, Workers' Compensation §§ 475 et seq.

CJS. 100 C.J.S., Workers' Compensation §§ 414 et seq.

Practice References. Larson's Workers' Compensation Law (Matthew Bender).

§ 71-3-49. Enforcement of payment in default.

(1) In case of default by the employer in the payment of any compensation due under an award for the period of thirty (30) days after payment is due and payable or, where the employer has failed to secure the payment of compensation to his employees as required, where there is such default in payment for a period of ten (10) days after same is due, any party in interest may file with the county clerk for the county in which the injury occurred or the county in which the employer has his principal place of business a certified copy of the decision of the commission awarding compensation or ending, diminishing or increasing compensation previously awarded, from which no appeal has been taken within the time allowed therefor or, if an appeal has been taken by an employer who has not complied with the provisions of Section 71-3-75, where he fails to deposit with the commission the amount of the award as security for its payment within ten (10) days after same is due and payable, and thereupon judgment must be entered in the circuit court by the clerk of such county in conformity therewith immediately upon the filing of such decision. If the payment in default be an installment, the commission may declare the entire award due and judgment may be entered in accordance with the provisions of this section. Such judgment shall be entered in the same manner, have the same effect, and be subject to the same proceedings as though rendered in a suit duly heard and determined by the circuit court, except that no appeal may be taken therefrom. The court shall vacate or modify such judgment to conform to any later award or decision of the commission upon presentation of a certified copy of such award or decision. The award may be so compromised by the commission as in its discretion may best serve the interest of the persons entitled to receive the compensation or benefits. Neither the commission nor any party in interest shall be required to pay any fee to any public officer for filing or recording any paper or instrument or for issuing a transcript of any judgment executed in pursuance of this section.

(2) In case of default by a self-insurer in payment of any compensation due under an award where the default is due to the insolvency of the self-insurer, the claimant may file a claim based on the award with the Mississippi Workers' Compensation Self-insurer Guaranty Association, pursuant to the rules and regulations of said association, as established and provided for in Sections 71-3-151 through 71-3-181.

SOURCES: Codes, 1942, § 6998-25; laws, 1948, ch. 354, § 19; reenacted without change, Laws, 1982, ch. 473, § 25; Laws, 1988, ch. 554, § 17; reenacted without change, Laws, 1990, ch. 405, § 26, eff from and after July 1, 1990.

JUDICIAL DECISIONS

1. In general.

Where a claimant, appealing from the decision of the workmen's compensation commission to the circuit court, successfully contended that he was entitled to recover the 20 per cent penalty as provided for in Code 1942, § 6998-19(f), but was unsuccessful as to his contention that the entire award should have been judged to be due and payable as provided in this section [Code 1942, § 6998-25], the court was authorized under Code 1942, § 1593, to apportion the cost between the parties. T.C. Fuller Plywood Co. v. Moffett, 231 Miss. 382, 95 So. 2d 475 (1957).

RESEARCH REFERENCES

Am Jur. 82 Am. Jur. 2d, Workmen's Compensation §§ 584 et seq.

CJS. 101 C.J.S., Workers' Compensation §§ 1474-1483.

§ 71-3-51. Court review of compensation award.

The final award of the commission shall be conclusive and binding unless either party to the controversy shall, within thirty (30) days from the date of its filing in the office of the commission and notification to the parties, appeal therefrom to the Supreme Court.

Such appeal may be taken by filing notice of appeal with the commission, whereupon the commission shall under its certificate transmit to the Supreme Court all documents and papers on file in the matter, together with a transcript of the evidence, the findings, and award, which shall thereupon become the record of the cause. Appeals shall be considered only upon the record as made before the commission. The Supreme Court shall always be deemed open for hearing of such appeals. The Supreme Court shall review all questions of law and of fact. If no prejudicial error be found, the matter shall be affirmed and remanded to the commission for enforcement. If prejudicial error be found, the same shall be reversed and the Supreme Court shall enter such judgment or award as the commission should have entered. An appeal from the commission to the Supreme Court shall not act as a supersedeas unless the court shall so direct, and then upon such terms as such court shall direct.

No controversy shall be heard by the commission or an award of compensation made therein while the same matter is pending either before a federal court or in any court in this state.

Any award of compensation made by the Supreme Court shall bear the same interest and penalties as do other judgments awarded in circuit court.

SOURCES: Codes, 1942, § 6998-26; Laws, 1948, ch. 354, § 20; Laws, 1950, ch. 412, § 10; reenacted without change, Laws, 1982, ch. 473, § 26; reenacted without change, Laws, 1990, ch. 405, § 27; Laws, 2011, ch. 389, § 1, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment substituted "the Supreme Court" for references to "the circuit court of the county in which the injury occurred" and "the circuit court" throughout; in the second paragraph, rewrote the third sentence, deleted the former seventh sentence, which read: "Appeals may be taken from the circuit court to the supreme court in the manner as now required by law," and deleted "to which such appeal is directed" following "supersedeas unless the court" in the last sentence; and in the last paragraph, deleted "circuit court and appealed to the" preceding "Supreme Court."

JUDICIAL DECISIONS

1. In general.
2. Who may appeal.
3. Proceedings in Circuit Court.
4. —Preference cases.
5. — Judgments.
6. Reversal, vacation, or modification of commission's award, generally.
7. —Commission's findings upheld.
8. —Commission's findings reversed.
9. Particular injuries and circumstances; commission's findings upheld.
10. —Commission's findings reversed.
11. Damages.
12. Penalties.
13. Interest.

1. In general.

Trial court erred in granting the employer's motion for summary judgment on the basis that the complaint was time-barred; under Miss. Code Ann. § 71-3-51, the Legislature intended to postpone the conclusiveness and finality of the order until expiration of the thirty days allowed for appeal, and the wife's claim was filed within three years of the judgment. Harper v. Cal-Maine Foods, Inc., 43 So. 3d 457 (Miss. Ct. App. 2009), reversed by 43 So. 3d 401, 2010 Miss. LEXIS 307 (Miss. 2010).

Thirty-day period for appeal commenced on the date of the Workers' Compensation Commission order. Tinnon v. C. Hager & Sons Hinge Mfg. Co., 795 So. 2d 594 (Miss. Ct. App. 2001).

The court properly dismissed an appeal where the notice of appeal was not filed until 33 days after the Workers' Compensation Commission's order, notwithstanding that the appellant did not receive notice of the commission's order until she received it in the mail four days after it was issued. Triplett v. Farm Fresh Catfish Co., 737 So. 2d 438 (Miss. Ct. App. 1999).

Standard of review in workers' compensation cases is limited and substantial evidence test is used. Inman v. Coca-Cola/Dr. Pepper Bottling Co., 678 So. 2d 992 (Miss. 1996).

Workers' Compensation Commission is trier and finder of facts in compensation claim; Supreme Court will reverse Commission's order only if it finds that order clearly erroneous and contrary to overwhelming weight of evidence. Inman v. Coca-Cola/Dr. Pepper Bottling Co., 678 So. 2d 992 (Miss. 1996).

Substantial evidence supported finding by Workers' Compensation Commission that claimant's transfer to Memphis, Tennessee was permanent and, thus, Mississippi court did not have jurisdiction to determine his claim for workers' compensation benefits arising out of accident in Tennessee. Inman v. Coca-Cola/Dr. Pepper Bottling Co., 678 So. 2d 992 (Miss. 1996).

By statute, only final orders of the Workers' Compensation Commission are appealable. Blankenship v. Delta Pride Catfish, Inc., 676 So. 2d 914 (Miss. 1996).

Where Workers' Compensation Commission, on review of a decision of its hearing officer, enters order remanding case to administrative judge for further proceedings or testimony, the order is interlocutory only and is not appealable. Blankenship v. Delta Pride Catfish, Inc., 676 So. 2d 914 (Miss. 1996).

Order is interlocutory, and not appealable, when substantial rights of the parties involved in action remain undetermined and when cause is retained for further action. Blankenship v. Delta Pride Catfish, Inc., 676 So. 2d 914 (Miss. 1996).

Workers' Compensation Commission's order was final for purposes of appeal because it determined all matters among the parties and nothing had been retained by Commission or remanded to administrative law judge for further consideration. Blankenship v. Delta Pride Catfish, Inc., 676 So. 2d 914 (Miss. 1996).

Appeals from state administrative agency hearings are controlled by statute and will only be allowed after entry of a final order; thus, an appeal from a circuit court's order remanding the case to the Mississippi Employment Security Commission's Board of Review for a hearing de novo was not properly before the Supreme Court, since the order was interlocutory in nature. Wilson v. Mississippi Emp. Sec. Comm'n, 643 So. 2d 538 (Miss. 1994).

There is no statute authorizing an appeal from anything other than a final order of the Workers' Compensation Commission, and therefore a circuit court may not grant an appeal from an interlocutory order of the Commission. Thus, judgments of circuit courts emanating from appeals from interlocutory orders of the Commission were nullities. Bickham v. Department of Mental Health, 592 So. 2d 96 (Miss. 1991).

While the Administrative Judge is generally, within the Workers' Compensation Commission, the individual who conducts the hearing and hears the live testimony, the Commission itself is, in law, the finder of the facts, and on judicial review, the Commission's findings and decisions are subject to the normal deferential standards, notwithstanding the Administrative Judge's actions. Walker Mfg. Co. v. Cantrell, 577 So. 2d 1243 (Miss. 1991).

If a decision of the Workers' Compensation Commission is based on substantial evidence, the circuit court and the Supreme Court are bound by the finding of fact made by the Commission. International Paper Co. v. Kelley, 562 So. 2d 1298 (Miss. 1990).

The review of the decisions of the Workers' Compensation Commission is like the review of any other administrative body which sits as a trier of fact. If the decision of the Commission is based upon substantial evidence and there is no error of law, the decision will be affirmed on appeal. Thus, if there is a quantum of credible evidence which supports the decision of the Commission, no court will reverse the decision. The Supreme Court will not determine where the preponderance of the evidence lies when the evidence is conflicting, the assumption being that the Commission, as the trier of facts, has previously determined which evidence is credible and which is not. This is not to say that the reviewing court will merely "rubber stamp" the Commission's actions; where no evidence or only a scintilla of evidence supports a Workers' Compensation Commission decision, the Supreme Court would not hesitate to reverse. Metal Trims Indus., Inc. v. Stovall, 562 So. 2d 1293 (Miss. 1990).

In order to preserve point for review by Supreme Court, point must be presented not only to Workers' Compensation Commission but also to Circuit Court by assignment of error there; failing to do so results in waiver of issue. Sawyer v. Head, 510 So. 2d 472 (Miss. 1987).

An appeal from Workers' Compensation Commission interlocutory order was granted by Supreme Court to avoid expense and delay. Sonford Prods. Corp. v. Freels, 495 So. 2d 468 (Miss. 1986), overruled on other grounds, Bickham v. Department of Mental Health, 592 So. 2d 96 (Miss. 1991).

Principal of liberal construction in favor of award of benefits to workmen's compensation claimant does not allow court reviewing denial of claim to bridge gaps in failure of medical testimony or to find causal connections to employment where none exists. Olen Burrage Trucking Co. v. Chandler, 475 So. 2d 437 (Miss. 1985).

Under § 71-3-51, the appellate court had the duty to review the facts contained in the record and to determine whether or not those facts substantiated the order of the Workers' Compensation Commission. Flake v. Randle Reed Trucking Co., 458 So. 2d 223 (Miss. 1984).

All questions of law and fact are reviewable by the circuit judge in reviewing a compensation case under § 71-3-51, but unless prejudicial error is found or the verdict is against the overwhelming weight of the credible evidence, the commission's order is to be affirmed. Strickland v. M.H. McMath Gin, Inc., 457 So. 2d 925 (Miss. 1984).

An order of the Workman's Compensation Commission remanding a claim to the administrative judge for further hearing was an interlocutory order and therefore not appealable to the circuit court. Southern Natural Resources, Inc. v. Polk, 388 So. 2d 494 (Miss. 1980).

The Workmen's Compensation Commission is the trier of facts and judge of the credibility of witnesses and a finding by it, supported by substantial evidence, is not to be disturbed on appeal. Shippers Express v. Chapman, 364 So. 2d 1097 (Miss. 1978).

Although this section [Code 1942, § 6998-26] provides for an appeal to the circuit court of the county in which the injury occurred, the circuit court of the county of claimants' residence has jurisdiction to hear the appeal despite the fact that the injury occurred elsewhere. Leake County Coop. (A.A.L.) v. Dependents of Barrett, 226 So. 2d 608 (Miss. 1969).

The commission has full power and authority to determine all questions relating to claims for compensation, including the authority to make such investigations as it deems necessary; it has specific authority to order medical examinations; and comprehensive judicial review of the commission's action is provided for. Everitt v. Lovitt, 192 So. 2d 422 (Miss. 1966).

Since order rejecting compensation claim was not final until it reached the supreme court, this section [Code 1942, § 6998-26] was applicable to a case which was pending in the supreme court at a time it was discovered that the applicant was not suffering from a disease, which formed the basis for the rejection of his claim for compensation. Pryor v. Woodall Indus., Inc., 250 Miss. 672, 167 So. 2d 920 (1964).

While there is a division of authority as to whether or not the statute of limitations is tolled by the appeal, in view of the provisions of this section [Code 1942, § 6998-26], which must be read and considered in conjunction with Code 1942, § 6998-27, an applicant is entitled to file his application for a review of his compensation claim with the workmen's compensation commission within one year after the judgment of the supreme court finally rejects his claim. Pryor v. Woodall Indus., Inc., 250 Miss. 672, 167 So. 2d 920 (1964).

The legal effect of the evidence and the conclusion drawn by the commission from the facts, as distinguished from its findings of evidentiary facts, is a question of law reviewable by the courts, especially where the facts are undisputed or overwhelmingly established. Central Elec. Power Ass'n v. Hicks, 236 Miss. 378, 112 So. 2d 230 (1959); M.T. Reed Constr. Co. v. Garrett, 249 Miss. 892, 164 So. 2d 476 (1964).

Temporary disability is not conclusively presumed to continue until the appellate court's affirmance of an award therefor, so as to require payments of compensation for the period of pendency of the appeal. Jackson Ready-Mix Concrete v. Young, 236 Miss. 550, 111 So. 2d 255 (1959).

Judicial review of findings of the commission extends to a determination of whether they are clearly erroneous; and a finding is erroneous where, although there is some slight evidence to support it, the court on the entire evidence is left with a definite conviction that a mistake has been made in the findings of fact and in applying the Workmen's Compensation Law. Central Elec. Power Ass'n v. Hicks, 236 Miss. 378, 112 So. 2d 230 (1959).

The commission's findings are to be reviewed on the whole record, and not merely on the evidence tending to support them. Central Elec. Power Ass'n v. Hicks, 236 Miss. 378, 112 So. 2d 230 (1959).

The application by the commission of the legislative standards is an appropriate question for judicial decision. Central Elec. Power Ass'n v. Hicks, 236 Miss. 378, 112 So. 2d 230 (1959).

This provision does not authorize a review de novo, but clearly states an intent that the reviewing court shall examine the record to determine whether the policies and purposes of the Workmen's Compensation Law are being carried out in the particular case, and whether the law is receiving a broad and liberal construction without over-emphasis on technicalities. Central Elec. Power Ass'n v. Hicks, 236 Miss. 378, 112 So. 2d 230 (1959).

Where facts are undisputed, the matter for decision is one of law, reviewable by the courts. Wilson v. International Paper Co., 235 Miss. 153, 108 So. 2d 554 (1959).

Courts do not pass upon weight of conflicting reasonable medical evidence. Insurance Dep't v. Dinsmore, 233 Miss. 581, 104 So. 2d 296 (1958).

The language in this section [Code 1942, § 6998-26], to the effect that the final award of the commission shall be conclusive and binding unless either party shall appeal within 30 days, evinces a legislative intent to postpone the conclusiveness and finality of the order until the expiration of the 30 days allowed for appeal. T.C. Fuller Plywood Co. v. Moffett, 231 Miss. 382, 95 So. 2d 475 (1957).

2. Who may appeal.

Under this section [Code 1942, § 6998-26] either party is given the right to appeal within 30 days, and the fact that one party gives his notice of appeal one day before the other does not destroy the right of the other to appeal from the order of the workmen's compensation commission. Glenn-Phillips Masonry Contractors v. Glenn, 210 So. 2d 892 (Miss. 1968).

Where the employer and its insurer did not preserve their right of appeal by an appeal or cross-appeal from the commission to the circuit court, their cross-appeal to the supreme court cannot be considered. B.J. Collins v. Mississippi Emp. Sec. Comm'n, 190 So. 2d 894 (Miss. 1966).

Where the attorney-referee and commission had adjudicated liability for compensation benefits as to the insured member of a partnership and his insurance carrier, the failure to adjudicate the liability of the uninsured partner, who was also liable for payment of the compensation, gave the insurance carrier an appealable interest in the correctness of the commission's order; hence, the order of the commission was modified so as to adjudicate the liability for payment and compensation against the uninsured partner, in addition to the insured partner's carrier. United States Fid. & Guar. Co. v. Collins, 231 Miss. 319, 95 So. 2d 456 (1957), corrected, 231 Miss. 341, 96 So. 2d 456 (1957).

Although the original award did not allow an immediate lump sum payment, nor reasonable funeral expenses, nor compensation payments to the deceased prior to his death, where there had been no appeal by the claimants from the decision by the attorney-referee or the commission, their cross appeals could not be considered by the supreme court upon an appeal by the employer and his compensation carrier. Dixie Pine Prods. Co. v. Dependents of Bryant, 228 Miss. 595, 89 So. 2d 589 (1956).

The right of appeal from the final award of the workmen's compensation commission is not limited to an aggrieved party or a party against whom an award or judgment has been rendered, but is conferred upon either party to the controversy. An employer of an unsuccessful claimant was a party to controversy and as such was entitled to appeal from an adverse finding by the commission. Phillips v. T.H. Mastin & Co., 223 Miss. 44, 77 So. 2d 677 (1955).

Where there are rival claimants to an award and each is seeking to be recognized as the "widow" of the decedent, if an appeal is taken by either of the claimants or by the employer and the insurance carrier, such an appeal has the effect of bringing the entire case before the appellate court for review. Hill v. United Timber & Lumber Co., 68 So. 2d 420 (Miss. 1953).

3. Proceedings in Circuit Court.

When a circuit court reviews findings and conclusions of the Mississippi Workers' Compensation Commission, it sits as an intermediate court of appeals and reviews all questions of law and fact. When a decision of the Commission is before the circuit court on intermediate appeal, that court may not tamper with the findings of fact, where the findings are supported by a sufficient weight of evidence. Univ. of S. Miss. v. Gillis, 872 So. 2d 60 (Miss. Ct. App. 2003), cert. denied, 873 So. 2d 1032 (Miss. 2004).

Although an appeal from a workers' compensation award must be filed to the circuit court of the county in which the injury occurred, such requirement is a matter of venue, rather than jurisdiction, and, therefore, the appropriate remedy when an appeal is filed with the wrong circuit court is a transfer of venue, rather than a dismissal. Underwood v. McRae's, 811 So. 2d 400 (Miss. Ct. App. 2001).

Function of circuit court and Supreme Court, on appeal from rulings of Workers' Compensation Commission, is to determine whether there exists quantum of credible evidence which supports decision, and not to determine where preponderance of evidence lies when evidence is conflicting, given that it is presumed that

Commission, as trier of fact, has previously determined which evidence is credible and which is not. Hale v. Ruleville Health Care Ctr., 687 So. 2d 1221 (Miss. 1997).

Certainty is not a requisite in deciding a workers' compensation case, but, rather, the reviewing court considers reasonable medical probabilities. In other words, medical findings sufficient to show a compensable disability are not required to be precise, complete and unequivocal. Georgia-Pacific Corp. v. Gregory, 589 So. 2d 1250 (Miss. 1991).

Deadline for claimant to file cross-appeal to appeal which has been timely filed by employer is in no sense jurisdictional and Circuit Court has greater latitude in enforcement of time limitations with respect to cross-appeals than in case of direct appeals. South Cent. Bell Tel. Co. v. Aden, 474 So. 2d 584 (Miss. 1985).

In an action regarding the denial of workmen's compensation death benefits the circuit court improperly dismissed a petition for appeal, where a motion requesting a review of the evidence by the commission which was filed within the statutory period for appealing the commission's order tolled the time for appeal until the commission entered its order on the motion; the error was harmless, however where the circuit court heard the appeal under the commission's order overruling the motion for review. Johnston v. Hattiesburg Clinic, P.A., 423 So. 2d 114 (Miss. 1982).

Workmen's Compensation Commission is the trier of facts, as well as the judge of credibility of the witnesses, and the finding of the commission supported by substantial evidence should be affirmed by the circuit court; all questions of law and fact are reviewable by the circuit court judge, but he may not pass on the weight of the evidence where it is sufficient to support the commission's order. Roberts v. Junior Food Mart, 308 So. 2d 232 (Miss. 1975).

Circuit courts, as intermediate courts of appeal in workmen's compensation cases, are governed by the same rules and endowed with the same powers applicable to courts of appeal under appellate tradition, and the circuit court did not abuse its discretion by dismissing an appeal where the appellant failed to file briefs and prosecute until 96 days after the return day, in violation of the court's rule. Gulf Coast Drilling & Exploration Co. v. Permenter, 214 So. 2d 601 (Miss. 1968).

When the compensation commission's judgment is clearly erroneous and prejudicial on a question of law or fact, the circuit court on appeal should enter such judgment as the commission should have entered. Scott v. Brookhaven Well Serv., 246 Miss. 456, 150 So. 2d 508 (1963).

On review the test is whether the order of the workmen's compensation commission is supported by substantial evidence, and where the order is so supported, it is error for the circuit court to reverse the commission's order because in its opinion the claimant has failed to prove by a preponderance of the evidence that he is entitled to compensation. Babcock & Wilcox Co. v. McClain, 149 So. 2d 523 (Miss. 1963).

Where a finding of the attorney-referee in favor of claimants is affirmed by the commission and supported by substantial evidence, the award may not be removed on appeal to the circuit court. Gaines v. McCormick, 238 Miss. 535, 117 So. 2d 467 (1960).

The circuit court is an appellate court which must consider appeals on the record as made before the trial court, and therefore the motion of the insurance carrier to include, as a part of the record in the appeal then pending before a circuit court, a report of the doctor who performed an operation on the claimant after the hearing before the commission was properly overruled. Federated Mut. Implement & Hdwe. Ins. Co. v. Spencer, 219 Miss. 68, 67 So. 2d 878 (1953).

This section [Code 1942, § 6998-26], which allows court review of all questions of law and fact, enables the court on appeal to reverse the order of the compensation commission in a case where the court finds that such order was based upon findings of fact which were contrary to the weight of the evidence or upon an erroneous interpretation of the applicable provisions of the statute. Lucedale Veneer Co. v. Rogers, 211 Miss. 613, 48 So. 2d 148 (1950), error overruled 211 Miss. 613, 53 So. 2d 69.

4. —Preference cases.

An appeal from the denial of a claim for workmen's compensation benefits is not entitled to priority in hearing in the supreme court. Cuevas v. Sutter Well Works, 245 Miss. 478, 150 So. 2d 524 (1963).

Under this section [Code 1942, § 6998-26] the review of workmen's compensation award is a preference case in the circuit court but is not given preference on the docket of the supreme court. Plumbing & Heating Serv. v. Strickland, 49 So. 2d 243 (Miss. 1950); Hill's Dependents v. United Timber & Lumber Co., 221 Miss. 473, 62 So. 2d 776 (1953).

5. — Judgments.

An order of the circuit court which reversed a finding of the industrial commission, and which was later affirmed by the supreme court, became the law of the case and established that there was not sufficient evidence to support an award for a permanent partial disability and was controlling upon a retrial following remand, so that in the absence of additional testimony, it would be the court's determination that the claimant had not established a permanent partial disability for which an award could be made. Consumer Disct. Store v. Warren, 221 So. 2d 112 (Miss. 1969).

Where the Workers' Compensation Commission had issued no final order, the circuit court was without jurisdiction to hear an employer's appeal of the Commission's order dismissing the employer's appeal of an ALJ's decision granting the employee's motion to compel medical benefits. Cunningham Enters. v. Vowell, 937 So. 2d 32 (Miss. Ct. App. 2006).

Where, from a reading of a judgment of the circuit court which reversed the decision of workmen's compensation commission, it was clear that the court was of the opinion that there was prejudicial error in the record, the failure of the circuit court to incorporate in its judgment a formal recital that there was a prejudicial error did not invalidate the judgment of the circuit court. Hill v. United Timber & Lumber Co., 68 So. 2d 420 (Miss. 1953).

The amendment of the Workmen's Compensation Law placing awards of compensation made by judgment of circuit court in the same category as other judgments of circuit court and providing that, upon affirmance thereof, such judgments shall bear the same interest and penalties as to other judgment of circuit court, is plain and unambiguous and cannot be interpreted as placing such judgments awarding compensation in a more favored or different class than other judgments of circuit court. M.T. Reed Constr. Co. v. Martin, 215 Miss. 472, 61 So. 2d 300 (1952).

6. Reversal, vacation, or modification of commission's award, generally.

In a workers' compensation case where the administrative judge awarded the claimant permanent total disability benefits benefits, under Miss. Code Ann. § 71-3-17, but the Mississippi Workers' Compensation Commission found in favor of the employer and denied those benefits, the appellate court exceeded its limited scope of review, Miss. Code Ann. § 71-3-51, in upholding the circuit court's ruling which overturned the decision of the Commission that the claimant did not sustain a second work-related injury because the Commission's ruling that the claimant had not sustained a second work-related injury was clearly supported by substantial evidence including: (1) the testimony of the claimant's co-workers that the claimant had not reported a second injury; (2) the fact that, aside from the claimant's own treating physician, there was no medical evidence supporting her claim of a second injury; and (3) the fact that the only persons testifying as to the claimant's alleged second injury were the claimant, her family, and her treating physician. Raytheon Aero. Support Servs. v. Miller, 861 So. 2d 330 (Miss. 2003).

Only in rather extraordinary cases should circuit court reverse findings of Workers' Compensation Commission. Hale v. Ruleville Health Care Ctr., 687 So. 2d 1221 (Miss. 1997).

Under highly deferential standard of review, Supreme Court and circuit courts will not overturn decision of Workers' Compensation Commission unless said decision is arbitrary and capricious. Hale v. Ruleville Health Care Ctr., 687 So. 2d 1221 (Miss. 1997).

The circuit court proceeded in a legally incorrect manner when it deferred to the findings of fact made by the Administrative Judge rather than those of the Full Commission. Smith v. Jackson Constr. Co., 607 So. 2d 1119 (Miss. 1992).

In reversing the Commission's fact-finding, reviewing courts are advised to provided detailed, written support for their conclusions. R.C. Petro., Inc. v. Hernandez, 555 So. 2d 1017 (Miss. 1990).

Decisions of the Mississippi Workers' Compensation Commission on issues of fact will not be overturned if they are supported by substantial evidence. The Commission is the trier of facts as well as the judge of the credibility of the witnesses. Doubtful cases should be resolved in favor of compensation so as to fulfill the beneficial purposes of the statute. Miller Transporters, Inc. v. Guthrie, 554 So. 2d 917 (Miss. 1989).

Workers' Compensation Commission's findings, even if supported by some slight evidence, may be determined to be clearly erroneous on review, if, on the entire record, the reviewing court has a firm and definite conviction that a mistake has been made in findings of fact. Delta Drilling Co. v. Cannette, 489 So. 2d 1378 (Miss. 1986).

The substantial evidence rule to support the finding of an order of the workmen's compensation commission does not mean a small part of the total evidence, nor does the rule prevent an appellate court from examining the whole evidence to the end that the compensation law may be applied in a just and reasonable manner. Tiller v. Southern U.S.F., Inc., 246 So. 2d 530 (Miss. 1971).

The role of the courts in judicially reviewing decisions of the workmen's compensation commission based upon factual findings is appellate only; if the findings of the commission are supported by substantial evidence they are to be affirmed. Presto Mfg. Co. v. Teat, 241 So. 2d 661 (Miss. 1970).

An error in fixing the amount allowed for disability cannot be asserted for the first time on suggestion of error. Rigdon v. General Box Co., 249 Miss. 239, 162 So. 2d 863 (1964).

Reviewing courts will not reverse findings of fact unless manifestly against the weight of evidence. Miss-Lou Equip. Co. v. McGrew, 247 Miss. 142, 153 So. 2d 801 (1963).

Findings of the commission supported by substantial evidence will not be disturbed on appeal, though there is evidence which would have warranted a different result. Ed Bush Sandwich Shop v. Strauss, 243 Miss. 507, 138 So. 2d 741 (1962).

Where the commission has reached the right result, the assignment of an improper ground is not cause for reversal. Mississippi Hwy. Patrol v. Neal's Dependents, 239 Miss. 505, 125 So. 2d 544 (1960).

Where the finding of the commission, that an injury, causing death, sustained by an employee in driving his automobile from the place of his employment to his home was compensable, was supported by substantial evidence, the circuit court erred in reversing commission's order. Pace v. Laurel Auto Parts, Inc., 238 Miss. 421, 118 So. 2d 871 (1960).

Supreme court is not bound by the commission's decision on conflicting evidence, but will seek to ascertain whether or not the beneficent purpose of the Workmen's Compensation Law has been carried out. Russell v. Sohio S. Pipe Lines, 236 Miss. 722, 112 So. 2d 357 (1959).

Ordinarily, the supreme court will not disturb a commission finding; but where there is no substantial contradiction in the evidence the court may draw its own conclusion. Winters Hardwood Dimension Co. v. Harris' Dependents, 236 Miss. 757, 112 So. 2d 227 (1959).

The rule that a decision of the commission on disputed issues of fact will be affirmed where the commission's findings are supported by substantial and reasonable evidence, applies only where the pertinent statute has been applied in a just and reasonable manner. Central Elec. Power Ass'n v. Hicks, 236 Miss. 378, 112 So. 2d 230 (1959).

The supreme court will not vacate or set aside an award of compensation where the finding of the commission, on a disputed question of fact, is supported by substantial evidence. Insurance Dep't v. Dinsmore, 233 Miss. 581, 104 So. 2d 296 (1958); Thompson v. Armstrong Cork Co., 230 Miss. 730, 93 So. 2d 831 (1957).

Court is bound by commission findings supported by substantial evidence. Grubbs v. Revell Furn. Co., 234 Miss. 319, 106 So. 2d 390 (1958); Mississippi Pub. Serv. Comm'n v. Chambers, 235 Miss. 133, 108 So. 2d 550 (1959); Cole v. Superior Coach Corp., 234 Miss. 287, 106 So. 2d 71 (1958); I.B.S. Mfg. Co. v. Dependents of Cook, 241 Miss. 256, 130 So. 2d 557 (1961); Cudahy Packing Co. v. Ward, 241 Miss. 595, 130 So. 2d 858 (1961); Rivers Constr. Co. v. Dubose, 241 Miss. 527, 130 So. 2d 865 (1961) (superseded by statute as stated in Lindsey v. Lindsey (Miss. 1992) 612 So. 2d 376); Pickering v. Sunnyland Drilling Co., 242 Miss. 871, 137 So. 2d 176 (1962).

Where evidence as to whether claimant had in fact sustained any injury, and the extent of injury, if any, was in sharp conflict, the circuit court was in error in reversing the order of the commission denying an award. Boyd Constr. Co. v. Worthy, 234 Miss. 671, 107 So. 2d 120 (1958).

Where there is any substantial evidence to support the findings of the commission and the circuit court, the supreme court is not at liberty to override such findings. Nicholas Co. v. Dodson, 232 Miss. 569, 99 So. 2d 666 (1958).

7. —Commission's findings upheld.

Substantial evidence existed that a workers' compensation claimant sustained his injury while at work, notwithstanding confusion as to the date of the injury, because the Workers Compensation Commission found that: (1) the worker's testimony was credible; (2) his educational level contributed to the confusion of dates; and (3) he was a dependable, faithful employee, as well as a credible witness. F&F Constr. v. Holloway, 981 So. 2d 329 (Miss. Ct. App. 2008).

Circuit Court reversed the prior ruling of a 14 percent loss of wage earning capacity and found that the employee had suffered a 30 percent loss of wage-earning capacity, and the employee appealed yet again to the appellate court. The administrative law judge based his finding of a 14 percent loss of wage-earning capacity on a consideration of the employee's age, education, work history, and medical impairment, and the employee had been consistently employed since the injury in other positions at rates of pay not substantially less than what he had previously earned; thus, in finding a 30 percent loss of earning capacity, the circuit court applied an incorrect standard of review by reweighing the evidence presented and reversing the order of the Mississippi Workers' Compensation Commission as to loss of wage-earning capacity. Richards v. Harrah's Entm't, Inc., 881 So. 2d 329 (Miss. Ct. App. 2004).

A finding by the Workers' Compensation Commission that an injured manual laborer who was restricted by his doctor to lifting less than 40 pounds suffered only minimal industrial incapacity was not supported by substantial evidence where the decision was based largely on an alleged policy of the employer requiring workers to seek assistance when lifting more than 40 pounds, but the record contained no evidence of such a policy. DeLaughter v. South Cent. Tractor Parts, 642 So. 2d 375 (Miss. 1994).

The Workers' Compensation Commission's denial of benefits to an asthmatic employee would be reversed, even though a physician testified that there was not a "strong work-related causal connection between [the employee's] pneumonia and emphysema," where medical testimony established a causal connection between the exacerbation of her pre-existing respiratory problems and the inhalation of irritants in her work environment, and the employee's uncontroverted testimony of the onset pain in her side and back along with shortness of breath while she was performing her job duties established that her injury arose out of and in the course of her employment. Hedge v. Leggett & Platt, Inc., 641 So. 2d 9 (Miss. 1994).

A finding by the Workers' Compensation Commission that a lumberyard worker had sustained only a 50 percent loss of wage-earning capacity, and therefore suffered only partial rather than total permanent disability, would be reversed where the evidence indicated that he had difficulty performing "make-work" tasks at his employer's lumberyard after he returned to work and that his efforts to find other employment were unsuccessful, and the Commission's finding was based on the conclusion that the employee should have been able to secure "some type of gainful employment" merely because he had a high school education. Barnes v. Jones Lumber Co., 637 So. 2d 867 (Miss. 1994).

The circuit court did not err in reversing the Workers' Compensation Commission's finding that a claimant with a back injury had reached maximum medical improvement and suffered no permanent disability where there was evidence that the claimant had 2 ruptured discs surgically removed, specialists who initially concluded that the claimant had no ruptured discs did not later examine him after the discovery of the ruptured discs was made, and the employer failed to show that the claimant suffered any disassociated intervening injury which caused the ruptured discs, their surgical removal and the resulting disability. Marshall Durbin Cos. v. Warren, 633 So. 2d 1006 (Miss. 1994).

Since Worker's Compensation Commission's denial of benefits was supported by substantial evidence, the judgment of the circuit court reversing the commission and remanding case would be reversed. Penrod Drilling Co. v. Etheridge, 487 So. 2d 1330 (Miss. 1986).

Award of additional benefits for a 1977 work-related injury, being supported by substantial evidence, would be affirmed, notwithstanding fact that claimant sustained injuries from a 1978 automobile accident. Emerson Elec. Co. v. McLarty, 487 So. 2d 228 (Miss. 1986).

Where evidence before the workmen's compensation commission posed an issue of fact as to whether an employee had been injured in the course of his employment, with some evidence supporting and other evidence refuting the employee's claim of injury, the determination of the issue was for the commission, and it was error for the court to reverse the commission's finding, which was supported by substantial evidence, that he had not sustained the injury. Presto Mfg. Co. v. Teat, 241 So. 2d 661 (Miss. 1970).

Where the finding of the workmen's compensation commission is supported by substantial evidence, the supreme court is not authorized to reverse. Anderson v. Ingalls Shipbuilding Corp., 229 Miss. 670, 91 So. 2d 756 (1957); Sullivan v. C. & S. Poultry Co., 234 Miss. 126, 105 So. 2d 558 (1958).

Where the only assignment of error in the supreme court was that the circuit court erred in affirming the action of the commission in reversing the order of the attorney-referee and awarding compensation to the claimant, the sole question was whether there was substantial evidence to support the finding and order of the commission, and where this was answered in the affirmative, the supreme court was not warranted in reversing the action of the commission. City of Moss Point v. Collum, 230 Miss. 139, 92 So. 2d 456 (1957).

Where a finding of the commission on a disputed question of fact is supported by substantial evidence, the circuit court should not, and neither will the supreme court, reverse the commission's judgment. Williams Bros. Co. v. McIntosh, 226 Miss. 553, 84 So. 2d 692 (1956).

8. —Commission's findings reversed.

An order of the Workmen's Compensation Commission denying permanent partial benefits for injury to a claimant's back was not supported by substantial evidence, where the testimony of the only physician who examined claimant's back was to the effect that he had sustained injuries to his spine which were causally related to an industrial accident and that claimant had not reached maximum improvement as of the date of the hearing. Gray v. Poloron Prods., 347 So. 2d 363 (Miss. 1977).

Where a decision of the workmen's compensation commission is clearly erroneous and adverse to the overwhelming weight of the evidence, so that the commission's order fails to carry out the beneficent intent and purpose of the workmen's compensation law, the court must reverse the order of the commission, and a decision is clearly erroneous when, although there may be some evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made by the commission in its findings of fact and in its application of the law. Harpole Bros. Constr. Co. v. Parker, 253 So. 2d 820 (Miss. 1971).

The circuit court properly reversed an order of the workmen's compensation commission denying compensation, where the order was clearly erroneous, and where the only possible basis for the denial was the testimony of one doctor which, when considered with the other evidence in the case, lost much of its character and did not amount to substantial evidence. Harpole Bros. Constr. Co. v. Parker, 253 So. 2d 820 (Miss. 1971).

9. Particular injuries and circumstances; commission's findings upheld.

Testimony of neurosurgeon, to whom claimant was referred by her attorney, that claimant suffered five percent permanent disability was sufficient basis for Workers' Compensation Commission's ruling that claimant suffered five percent disability, although testimony was disputed by reputable physicians. Hale v. Ruleville Health Care Ctr., 687 So. 2d 1221 (Miss. 1997).

An employer's workers' compensation carrier would be liable for the injuries of an employee who was injured while changing a neighboring business' outdoor advertising sign where the employer had a policy of goodwill toward its business neighbors, which included changing the sign for the neighboring business, and the employees were expected to help foster the goodwill policy; since the employee acted in conformity with his employer's dictates, he acted in the course and scope of his employment, and was not a loaned servant to the neighboring business. Quick Change Oil & Lube, Inc. v. Rogers, 663 So. 2d 585 (Miss. 1995).

The evidence was sufficient to support the Workers' Compensation Commission's finding that an employee's mental disability was caused by a deliberate course of conduct by his employer and that there was nothing in his psychological background to suggest a pre-existing personality disorder, so that the stresses to which the employee was subjected were "more than the ordinary incidents of employment" and were "untoward events or unusual occurrences" culminating in his subsequent disability, where a psychiatrist who treated the employee for over 2 years testified that the employee was psychologically disabled and that his work played a significant part in causing it, and testimony from the employee, the employee's wife, and fellow employees established a protracted pattern by the employer to put pressure and stress upon the employee. Borden, Inc. v. Eskridge, 604 So. 2d 1071 (Miss. 1991).

There was substantial evidence in a physician's testimony to support the Workers' Compensation Commission's determination as to the date a claimant reached maximum medical recovery, and therefore the circuit court erred in finding a different date based on the opinion of another physician. Jordan v. Hercules, Inc., 600 So. 2d 179 (Miss. 1992), but see Dulaney v. National Pizza Co., 733 So. 2d 301 (Miss. Ct. App. 1998).

The evidence was sufficient to support the Workers' Compensation Commission's finding that a claimant's hypertension was work-related, thus obliging the claimant's former employer to pay for medical expenses incurred by the claimant for periodic checkups for his hypertensive condition as ordered by his treating physician, where the claimant began to experience tension, anxiety and stomach problems, which the physician diagnosed as hypertension, during the time the claimant worked for the employer, and the physician concluded that the claimant's job caused him to experience significant stress which aggravated his hypertensive condition so as to require him to take a medical leave of absence. Berry v. Universal Mfg. Co., 597 So. 2d 623 (Miss. 1992).

A finding by the Workers' Compensation Commission that an employee's pre-existing heart condition was aggravated by exposure to chemicals in the workplace rendering him totally and permanently disabled was not clearly erroneous where the employee was exposed to numerous amounts of volatile chemicals under poor ventilation conditions for a period of 29 years and the testimony before the Commission revealed that the chemicals would enter the lungs and bloodstream and could have had an adverse effect upon the employee's heart. Mitchell Buick, Pontiac & Equip. Co. v. Cash, 592 So. 2d 978 (Miss. 1991).

The evidence was sufficient to support a finding by the Workers' Compensation

Commission that noise at an employee's work site was a contributing, precipitating, or aggravating factor in the production of Meniere's Syndrome, even though the etiology of Meniere's Syndrome is largely unknown, where there was substantial evidence that exposure to high intensity noise for a period of years at the work site contributed to, aggravated or accelerated the employee's condition, and this evidence was not controverted by any direct medical evidence. Georgia-Pacific Corp. v. Gregory, 589 So. 2d 1250 (Miss. 1991).

There was substantial evidence supporting a finding by the Workers' Compensation Commission that a claimant's impairment was a whole body injury rather than a schedule numbered injury only, where a physician identified the claimant's malady as Meniere's Syndrome, and he testified that Meniere's Syndrome is "an inner ear dysfunction that appears to be lifelong in nature" and that it affected the entire body in that, in addition to a loss of hearing, it involved a balance dysfunction affecting the claimant's activities of daily living, both occupationally and socially. Georgia-Pacific Corp. v. Gregory, 589 So. 2d 1250 (Miss. 1991).

The evidence supported a finding that an employee suffered a 100 percent industrial loss of use of his left leg, rather than only a 40 percent loss, even though the employee's treating physician testified that the employee had a 40 percent permanent partial impairment of his left leg, where the physician also testified that the employee would be limited in activities such as standing for long periods, climbing ladders and stairs, and carrying heavy loads but that he could work in sedentary types of positions where he could sit to do the work, the employee was a 43-year-old man who dropped out of school during the 10th grade, from that time until the time of his injury he worked in construction, did carpentry work, and delivered furniture, at the time of the injury he was employed at a furniture company where he did not perform any one particular job but was moved around from job to job as needed, some of the jobs that he performed at the company included working in the sanding department, cutting out chest-of-drawer tops, and working in the mill, the employee testified that after his injury he could not do carpentry work and could not do any jobs which required him to stand but he could sand edges and use a table saw, and he testified that he continued to have problems with his leg every day, including swelling and pain. McGowan v. Orleans Furn., Inc., 586 So. 2d 163 (Miss. 1991).

The evidence was sufficient to support a finding that a claimant suffered only a 5 percent permanent partial occupational disability by reason of a work-connected injury to his left hand, where the claimant failed to offer evidence that he had unsuccessfully attempted to perform his usual duties, and he failed to offer evidence that he was refused employment based upon the disability to his hand in that he made no search for work outside his prior employment, stating that his car had been repossessed and he was without transportation. Walker Mfg. Co. v. Cantrell, 577 So. 2d 1243 (Miss. 1991).

The Workers' Compensation Commission's findings that a truck driver sustained a compensable injury and that the repeated trauma of his work aggravated a pre-existing non-work-related condition were supported by substantial evidence where the worker's treating physician and the physician for the employer who conducted a physical examination required by the Department of Transportation had released the worker to return to work following treatment for a non-work-related back injury and the treating physician testified that the worker had a "chronically sore joint in the back that was apparently being aggravated by the nature of his work as a long-distance truck driver." Miller Transporters, Inc. v. Guthrie, 554 So. 2d 917 (Miss. 1989).

Reviewing court will not overturn finding of compensability of hysterical conversion reaction injury resulting when employer, through its agent, deliberately creates heightened expectation of advancement in particular worker and then triggers reaction by doing something worker can reasonably perceive as betrayal. Brown & Root Constr. Co. v. Duckworth, 475 So. 2d 813 (Miss. 1985).

Commission finding of fact on apportionment of disability between injury on job and pre-existing condition will be reversed on appeal where finding has been made in broad conclusory language for which reviewing court finds no substantial evidence in record. South Cent. Bell Tel. Co. v. Aden, 474 So. 2d 584 (Miss. 1985).

Where the finding of the attorney-referee and the commission, that claimant was partially and permanently disabled to the extent of 15 percent to the body as a whole and that such disability resulted in a loss of 17 percent wage-earning capacity, was supported by substantial evidence, circuit court's judgment of reversal was reversed by the supreme court, and the case remanded to the commission. Grubbs v. Revell Furn. Co., 234 Miss. 319, 106 So. 2d 390 (1958).

On a highly technical issue arising by reason of the divergent viewpoints of learned doctors, the supreme court will not undertake to adjudicate that a hemilegia attack resulted solely from thrombus or clot and that the increased blood pressure, owing to the stress and strain of the claimant's duties, could have had nothing whatever to do with her disability, especially where there was ample evidence from which the triers of fact were warranted in finding that the aggravation of the claimant's preexisting hypertension was one of the factors which contributed to the attack. Insurance Dep't v. Dinsmore, 233 Miss. 581, 104 So. 2d 296 (1958).

Under conflicting evidence, an award of compensation to a claimant for injuries to his teeth, without any award for injuries to his coccyx, sacrum and rectum, was affirmed. Fondren v. Fortenberry Drilling Co., 233 Miss. 210, 101 So. 2d 654 (1958).

Medical testimony supported the finding that an accidental burn suffered by the claimant while engaged in his duties, together with the resultant and anticipated treatment thereof, was causally related to and precipitated the claimant's heart attack. Harper Foundry & Mach. Co. v. Harper, 232 Miss. 873, 100 So. 2d 779 (1958).

Where there was abundant medical testimony to support the conclusion, the commission's decision denying a claim, upon the ground that the death of the employee, due to a heart attack, was not causally related to the activities of his employment, was affirmed. Halbert v. Lamar Adv. Agency, 231 Miss. 437, 95 So. 2d 535 (1957).

Since the questions of whether or not a leg injury suffered by an employee in the course of his employment aggravated the pre-existing varicose veins, or whether the pre-existing condition interfered with the healing of the injury or otherwise caused the claimant to be temporarily totally disabled, were for determination of the commission, an award to the worker was affirmed. Jackson Ready-Mix Concrete v. Young, 230 Miss. 644, 93 So. 2d 645 (1957).

Evidence, substantially consisting of the response of a medical specialist in cardiology and internal medicine to hypothetical questions, was sufficient to sustain the commission's finding that manual labor performed by a worker in handling lumber in the course of his employment with a lumber company was a precipitating cause of death due to coronary thrombosis. Lee v. Haltom Lumber Co., 230 Miss. 655, 93 So. 2d 641 (1957).

In a workman's compensation proceeding for death benefits, the commission's finding, which was supported by substantial evidence, that the death of an employee caused by a heart condition was not attributable to the work of the employee's employment, and thus not compensable, was affirmed, although there may have been substantial evidence to support a contrary finding. Freeman v. Mississippi Power & Light Co., 230 Miss. 396, 92 So. 2d 658 (1957).

Workmen's compensation commission's finding that there was a causal connection between claimant's heart attack and his work was supported by substantial evidence. Ingalls Shipbuilding Corp. v. Dickerson, 230 Miss. 110, 92 So. 2d 354 (1957).

Contention that there was no causal connection between claimant's work and his stroke, but was brought on by a horseplay in which the claimant was the aggressor, was not sustained where it appeared that the claimant grabbed at his coworker's legs or pant legs to keep from falling when the attack came upon him, and the uncontradicted testimony of two doctors was that the mere act of the claimant in reaching or grabbing for the legs or pant legs of his coworker was not sufficiently strenuous to bring on or precipitate the claimant's attack. Prince v. Nicholson, 229 Miss. 718, 91 So. 2d 734 (1957).

Where the overwhelming weight of the medical testimony showed that the employment in which the claimant was engaged was a contributing cause of his cerebral hemorrhage, resulting in a stroke which paralyzed his entire left side, the finding of the workmen's compensation commission awarding benefits was affirmed. Prince v. Nicholson, 229 Miss. 718, 91 So. 2d 734 (1957).

Where the workmen's compensation commission's finding that there was no causal connection between the claimant's disability and the injury which occurred in the course of her employment was supported by substantial evidence, action of the commission in denying benefits to the claimant was affirmed upon appeal. Malley v. Over The Top, Inc., 229 Miss. 347, 90 So. 2d 678 (1956).

Workmen's compensation commission's finding that there was no causal connection between claimant's disability and the injury which occurred in the course of her employment was supported by substantial evidence, including physicians' testimony fairly demonstrating that neither the injury nor the operation was the probable cause of the disabling pain and further showing that a preexisting disease, revealed by a pelvic examination, was the probable cause of the pain. Malley v. Over The Top, Inc., 229 Miss. 347, 90 So. 2d 678 (1956).

Where an employee was determined to have tuberculosis on a date some six weeks after he had left the employment of his former employer and started working for an independent contractor, medical evidence, including testimony as to rapid progress of tuberculosis in members of the Negro race, as well as the difficulty of determining when the employee first contracted the disease, presented a question of fact for the workmen's compensation board as to whether the employee had the disease at the time he left the former employer's service, and its determination that he did not, being supported by substantial evidence, would be affirmed. Lawson v. Traxler Gravel Co., 229 Miss. 159, 90 So. 2d 204 (1956).

Medical testimony, as well as other enumerated circumstances, constituted substantial evidence that the trauma to the deceased employee's back, caused by an injury arising in the course of his employment, lighted up, aggravated, accelerated or combined with a preexisting cancerous condition to produce his death. Dixie Pine Prods. Co. v. Dependents of Bryant, 228 Miss. 595, 89 So. 2d 589 (1956).

10. —Commission's findings reversed.

Workers' compensation claimant's failure to present evidence regarding extent of care required before claimant was admitted to nursing home necessitated remand to determine how many hours a day of actual nursing care was needed, nature of services wife performed, and wage rate during relevant period, for purposes of calculating reimbursement for nursing services provided to claimant by his wife. Mississippi Transp. Comm'n v. Dewease, 691 So. 2d 1007 (Miss. 1997).

A circuit court judgment affirming the Workers' Compensation Commission's denial of benefits to a deceased employee's children was not supported by substantial evidence and would be reversed where the onset of the employee's death occurred at her place of employment and the employer failed to rebut the presumption that the employee's work activities did not cause or contribute to the condition from which she died; the unrebutted "found dead" legal presumption prevailed, satisfying the causal connection between the employee's work duties and the condition which resulted in her death. Nettles v. Gulf City Fisheries, Inc., 629 So. 2d 554, 47 A.L.R.5th 977 (Miss. 1993).

A finding that a claimant was not entitled to permanent disability benefits because his disability, which arose from slippage in the spine, was attributable entirely to preexisting spondylolisthesis was not supported by substantial evidence where there was conflicting medical testimony from 2 treating physicians as to the cause of the claimant's permanent disability and neither physician could determine how and when the slippage actually occurred, since close questions of compensability should be resolved in favor of the claimant, and the Workers' Compensation Act should be liberally construed to carry out its remedial purpose. McNeese v. Cooper Tire & Rubber Co., 627 So. 2d 321 (Miss. 1993).

An administrative law judge, as affirmed by the Workers' Compensation Commission and the circuit court, erred as a matter of law when he specifically stated that a hearing on an injured employee's motion to consider the need for additional medical treatment at the employer's expense under General Rule 9 was limited to whether the employee was suffering from improper medical treatment or lack of medical treatment, and then proceeded to make findings on maximum medical recovery and apportionment; an administrative law judge may not announce a limited purpose of a hearing, require the litigants to argue under limitation, and then decide the whole of the case including the time of maximum recovery apportionment and compensation. Monroe v. Broadwater Beach Hotel, 593 So. 2d 26 (Miss. 1992).

The evidence was insufficient to support a finding by the Workers' Compensation Commission that a claimant's back injury was work related where no doctor testified that the claimant received this injury on the job, no fellow worker corroborated the claimant's assertion that his injury occurred while on the job, and the claimant never reported any work related injury to his employer. Bechtel Corp. v. Phillips, 591 So. 2d 814 (Miss. 1991).

Decision of Workmen's Compensation Commission awarding benefits on basis of alleged back injury will be reversed on judicial review on basis of lack of sufficient evidence where only testimony regarding injury is that of claimant and those claimant informed, initial medical consultation for injury is almost full year after injury, and claimant's conduct after injury is so inconsistent with that of employee injured in course of employment as to cause loss of credibility. Hudson v. Keystone Seneca Wire Cloth Co., 482 So. 2d 226 (Miss. 1986).

A heart attack suffered by an employee while in the discharge of administrative duties was held by the supreme court to be compensable, notwithstanding the commission's contrary conclusion. Russell v. Sohio S. Pipe Lines, 236 Miss. 722, 112 So. 2d 357 (1959).

Where a truck driver accidentally lacerated his leg on June 26, 1954, causing considerable bleeding which continued to some extent even after medical attention, and following his release by the doctor to return to work, on July 5, 1954, the employee reported to work on July 9, 1954, while suffering from dizzy spells, and died on July 16th, 1954, as result of bleeding to death from a massive gastrointestinal hemorrhage and malignant hypertension, the attorney-referee's finding that death was not related to the injury of June 26th, the workmen's compensation commission's order affirming the finding, as well as the circuit court's affirming order, was not supported by substantial evidence and would be reversed. Williams v. Vicksburg Whsle. Poultry Co., 233 Miss. 384, 102 So. 2d 378 (1958).

Where a doctor, who had examined the injured employee approximately four months prior to the time of the hearing, estimated the employee's disability at 15 percent but stated that he had not seen the claimant since that time, whereas a doctor who had examined the claimant on the day of the hearing stated that claimant's disability to the body as a whole was 50 to 75 percent, and that the leg was from 90 to 100 percent disabled so far as manual labor was concerned, the circuit court properly reversed the order of the workmen's compensation commission awarding to the injured claimant permanent partial benefits for only a 15 percent loss of use of his leg. A. De Weese Lumber Co. v. Poole, 231 Miss. 83, 94 So. 2d 791 (1957).

Where both the claimant and a doctor who had last examined him on October, 6, 1955, testified at a hearing beginning on September, 1955 and concluding in November, 1955, that the claimant was suffering from a temporary total disability resulting from injury received in his employment, the circuit court properly reversed the workmen's compensation board's order denying claimant compensation benefits after June 5, 1955, which was based upon the opinion of a doctor who had last examined claimant on May

5, 1955, that claimant would be able to return to work within another month. Masonite Corp. v. Fields, 229 Miss. 524, 91 So. 2d 282 (1956).

11. Damages.

When temporary disability is involved, there is no authority for commuting an award of attorney fees in workers' compensation action. Blankenship v. Delta Pride Catfish, Inc., 676 So. 2d 914 (Miss. 1996).

In workers' compensation cases, fees are allowed on the basis of fairness to attorney and client and it is the declared policy of the law to approve voluntary contracts for attorney fees within the stated limits. Blankenship v. Delta Pride Catfish, Inc., 676 So. 2d 914 (Miss. 1996).

Attorney for workers' compensation claimant was entitled to reasonable expenses pursuant to his contract with claimant. Blankenship v. Delta Pride Catfish, Inc., 676 So. 2d 914 (Miss. 1996).

Statutory damages in an amount of 5 percent were not allowable where the circuit court failed to enter a money judgment in favor of the claimant, but the claimant was entitled to 6 percent interest on the installments of compensation from their due dates until paid. Davis v. Clark-Burt Roofing Co., 238 Miss. 464, 119 So. 2d 926 (1960).

Upon the affirmance of an award of workmen's compensation payments to the deceased employee's parents, who were found to be partially dependent upon the employee, claimants' motion for five percent statutory damages, and six percent interest on all installments which then had become due and remained unpaid, was sustained, as was their motion for attorneys' fees in the amount of one third of the award. Mid-State Paving Co. v. Farthing, 233 Miss. 333, 101 So. 2d 850 (1958).

A claimant who was awarded only permanent partial disability benefits when he was entitled to temporary total disability benefits until he recovered from an operation and attained maximum recovery was, upon motion, entitled to damages in the amount of 5% and 6% interest. Houston Contracting Co. v. Reed, 231 Miss. 213, 95 So. 2d 231 (1957).

Where the supreme court reversed the trial court's overturning of the workmen's compensation board's order allowing an employee compensation for a 50 percent loss of wage earning capacity, the 5 percent damages under Code 1942, § 1971, were not allowable. Russell v. Southeastern Utils. Serv. Co., 230 Miss. 272, 92 So. 2d 544 (1957).

Where wages of decedent were shown and the commission awarded benefits to the claimants, so that amount of the award could be determined by simple mathematic calculation, the claimants were entitled to an allowance of damages of 5 percent. Railway Exp. Agency v. Hollingsworth, 221 Miss. 688, 75 So. 2d 639 (1954).

The right of appellee to allowance of 5 percent damages on the affirmance of the judgment of the circuit court is governed wholly by statutory enactment, and such damages can only be awarded in the cases expressly provided for by the statute. M.T. Reed Constr. Co. v. Martin, 215 Miss. 472, 61 So. 2d 300 (1952).

The judgment of circuit court, in awarding workmen's compensation in certain amount per week for number of weeks, is not so definite and certain as to constitute a money judgment of which 5 percent damages can be calculated except as to the weekly installments which have already accrued and remained unpaid to the date of the entry of the judgment of affirmance. M.T. Reed Constr. Co. v. Martin, 215 Miss. 472, 61 So. 2d 300 (1952).

In workmen's compensation cases, 5 percent of damages cannot be allowed unless the judgment affirmed awards a definite or a fixed sum of money. M.T. Reed Constr. Co. v. Martin, 215 Miss. 472, 61 So. 2d 300 (1952).

12. Penalties.

Penalty for unsuccessful appeal is appropriate only when lower court's decision in workers' compensation case is affirmed in its entirety. Mississippi Transp. Comm'n v. Dewease, 691 So. 2d 1007 (Miss. 1997).

A 15 percent penalty cannot be imposed under § 11-3-23 on an appeal to the circuit court from the Mississippi Workers' Compensation Commission. Section 11-3-23 does not apply to an appeal from the

Workers' Compensation Commission to the circuit court, and there is no provision for such a penalty under § 71-3-51 which gives the circuit courts the authority to review an order of the Commission. Delchamps, Inc. v. Baygents, 578 So. 2d 620 (Miss. 1991).

Where claimant's attorneys, at beginning of a hearing before the attorney-referee, moved that, in event claimant's claim was compensable, all penalties provided for in subsections (e) and (g) of Code 1942, § 6998-19, be assessed against the insurance carrier and its employer, but no such contention was made when the matter was heard by the commission on review and claimant prosecuted no cross-appeal to the circuit court, the matter of allowing penalties under the above provisions was not before the supreme court on appeal. Fair Stores v. Bryant, 238 Miss. 434, 118 So. 2d 295 (1960).

The court will not determine whether a penalty should have been allowed for failure of the employer to report the injury where no request therefor was made to the commission. Gulf Park College v. Wheeler, 237 Miss. 155, 113 So. 2d 666 (1959).

On reversing a denial of death benefits, the supreme court will leave it to the commission to say whether penalties should be imposed, but will direct the allowance of interest at 6% on death benefits from the date the beneficiaries were entitled to receive them. Russell v. Sohio S. Pipe Lines, 236 Miss. 722, 112 So. 2d 357 (1959).

Code 1942, § 6998-19(f), providing that the 20 percent penalty should be assessed if any installment payment under the terms of an award is not made within 14 days after it becomes due, means that the period of 14 days should be calculated from the date the order making the award becomes final. T.C. Fuller Plywood Co. v. Moffett, 231 Miss. 382, 95 So. 2d 475 (1957).

Where a compensation insurance carrier, who had been ordered by the workman's compensation commission to make compensation payments to the claimant, complied with the commission's order 23 days after the date the order was entered and seven days before the time the statutory right of appeal from the order had expired, the claimant was not entitled to the 20 percent penalty provided by Code 1942, § 6998-19(f). T.C. Fuller Plywood Co. v. Moffett, 231 Miss. 382, 95 So. 2d 475 (1957).

13. Interest.

Claimant was entitled to interest at the rate of 6 percent per annum on each instalment of compensation from its due date until paid, and to 5 percent statutory damages on all payments due at the time the judgment of affirmance was entered by supreme court. Fair Stores v. Bryant, 238 Miss. 434, 118 So. 2d 295 (1960).

On reversing circuit court decision setting aside an award, supreme court will direct payment of interest from the due date of each unpaid instalment. Grubbs v. Revell Furn. Co., 234 Miss. 319, 106 So. 2d 390 (1958).

Interest on compensation payments prior to date of supreme court's judgment, reversing a denial of compensation, denied. Poole v. R.F. Learned & Son, 234 Miss. 362, 103 So. 2d 396 (1958).

Claimants were entitled to interest at 6 percent per annum from the respective due dates of workmen's compensation payments until paid or tendered. Dependents of Harris v. Suggs, 233 Miss. 533, 102 So. 2d 696 (1958).

On a motion to correct judgment, supreme court adjudged that each installment of compensation should bear 6% interest from its date until paid, and the claimant was entitled to 5% damages on unpaid installments with interest that had accrued to date. United States Fid. & Guar. Co. v. Collins, 231 Miss. 319, 95 So. 2d 456 (1957), corrected, 231 Miss. 341, 96 So. 2d 456 (1957).

Where the supreme court reversed the trial court's overturning of a workman's compensation board's order allowing employee compensation for 50 percent loss of wage earning capacity, employee's motion for 6 percent interest was sustained to the extent that each weekly instalment of compensation should bear interest at the rate of 6 percent per annum from its due date until paid. Russell v. Southeastern Utils. Serv. Co., 230 Miss. 272, 92 So. 2d 544 (1957).

RESEARCH REFERENCES

ALR. Longshoremen's and Harbor Workers' Compensation Act (33 USCS §§ 901 et seq.): right of Director of Office of Workers' Compensation Programs to intervene in proceeding to review decision of Benefits Review Board. 48 A.L.R. Fed. 839.

Am Jur. 82 Am. Jur. 2d, Workmen's Compensation §§ 587 et seq.

25 Am. Jur. Pl and Pr Forms (Rev), Workmen's Compensation, Forms 1 et seq.

CJS. 100A C.J.S., Workers' Compensation §§ 1223-1225 et seq.

§ 71-3-53. Continuing jurisdiction of the commission.

Upon its own initiative or upon the application of any party in interest on the ground of a change in conditions or because of a mistake in a determination of fact, the commission may, at any time prior to one (1) year after date of the last payment of compensation, whether or not a compensation order has been issued, or at any time prior to one (1) year after the rejection of a claim, review a compensation case, issue a new compensation order which may terminate, continue, reinstate, increase, or decrease such compensation, or award compensation. Such new order shall not affect any compensation previously paid, except that an award increasing the compensation rate may be made effective from the date of the injury; and if any part of the compensation due or to become due is unpaid, an award decreasing the compensation rate may be made effective from the date of the injury, and any payment made prior thereto in excess of such decreased rate shall be deducted from any unpaid compensation in such manner and by such method as may be determined by the commission.

SOURCES: Codes, 1942, § 6998-27; Laws, 1948, ch. 354, § 21; reenacted without change, Laws, 1982, ch. 473, § 27; reenacted without change, Laws, 1990, ch. 405, § 28, eff from and after July 1, 1990.

JUDICIAL DECISIONS

1. In general.
2. Redetermination after review.
3. Limitations period, generally.
4. —After closing of case.
5. —After rejection of claim.

1. In general.

Mississippi Workers' Compensation Commission's ruling that there was no mistake in determination of fact about an employee's work-related injury under Miss. Code Ann. § 71-3-53 was supported by substantial evidence, which included doctor's reports stating that the employee would probably need back surgery in the future as a result of her pre-existing condition. North Miss. Med. Ctr. v. Stevenson, 12 So. 3d 1149 (Miss. Ct. App. 2009).

Where an employer voluntarily paid for an employee's work-related medical expenses for two years and the employee subsequently filed a petition to controvert, the employee's argument under Miss. Code Ann. § 71-3-53 was improper because a review and change of compensation was not at issue since the Mississippi Workers' Compensation Commission never ordered any form of compensation in the employee's case. Baker v. IGA Super Valu Food Store, 990 So. 2d 254 (Miss. Ct. App. 2008), writ of certiorari denied en banc by 994 So. 2d 186, 2008 Miss. LEXIS 458 (Miss. 2008).

Wording of Miss. Code Ann. § 71-3-53 indicates that it applies in situations where there has been no compensation award. Edwards v. Wal-Mart, 930 So. 2d 1273 (Miss. Ct. App. 2006).

Workers' Compensation Commission had continuing jurisdiction to review a compensation case, issue a new compensation order which could terminate, continue, reinstate, increase, or decrease such compensation, or award compensation. Walls v. Franklin Corp., 797 So. 2d 973 (Miss. 2001).

The Workers' Compensation Commission did not abuse its discretion and was not clearly erroneous in its decision not to reopen a case where (1) it had substantial evidence before it to make an informed decision, and (2) although the claimant asserted that 23 of his medical reports were not made available to the commissioner for her consideration in approving a settlement, he did not state what information was contained in these reports and did not show how those reports could have changed the outcome of the settlement had they been included in the commission's portfolio of information. J. R. Logging v. Halford, 765 So. 2d 580 (Miss. Ct. App. 2000).

Previous adjudication by Circuit Court judge denying workmens' compensation benefit is res judicata to second proceeding on claim except to extent that case may be reopened for change of condition or because of mistake in determination of fact; reopening because of mistake in determination of fact may be made on basis of newly discovered evidence or evidence which for whatever good reason was not previously reflected in record and could include evidence to establish essential causal connection between initial injury and contemporaneous or resulting physical or mental disability; in order for reopening to be granted on basis of change in condition, there must be evidence presented to support finding indicating previous mistake in determination of fact so as to establish causal connection between initial injury and claimant's present condition. Aetna Cas. & Sur. Co. v. Espinosa, 469 So. 2d 64 (Miss. 1985).

In a workmen's compensation case arising out of a compromise settlement for a lump-sum payment made by an injured worker, the trial court properly reinstated an order of the administrative judge to reopen the cause with further proceedings to determine benefits where the employee, who possessed a fourth-grade education and was unable to read or write except to sign his name, had never been informed of the full extent of his disability, had not been represented by counsel during the settlement negotiations, had not been told the full amount of disability benefits to which he was entitled, and, generally, had been taken unfair advantage of by the carrier. Bailey Lumber Co. v. Mason, 401 So. 2d 696 (Miss. 1981).

Assuming that a change in the claimant's ability to get or hold employment may be considered to be a change of conditions within the meaning of this section, the claimant did not satisfy her burden of proof where her evidence did not establish that she had been refused employment because of her disability. North Miss. Medical Ctr. v. Henton, 317 So. 2d 373 (Miss. 1975).

An application to reopen under this section may not be used as a substitute for the right of appeal, and the commission did not abuse its discretion in refusing to reopen a case on the ground that there had been no award for permanent disability even though the record showed a 15% permanent partial disability had been established by the medical evidence. North Miss. Medical Ctr. v. Henton, 317 So. 2d 373 (Miss. 1975).

As a general rule the right to reopen proceedings to take further evidence in a workmen's compensation hearing is within the sound discretion of the commission. Marshall v. Oliver Elec. Mfg. Co., 235 So. 2d 244 (Miss. 1970).

The reopening of a case is in the discretion of the commission, and if its determination has a reasonable basis it will be affirmed. Armstrong Tire & Rubber Co. v. Franks, 242 Miss. 792, 137 So. 2d 141 (1962).

This section [Code 1942, § 6998-27] does not apply to a case in which claimant, the extent of whose disability it was not possible to ascertain, knowingly entered into a compromise settlement. Dixon v. Green, 240 Miss. 204, 127 So. 2d 662 (1961).

Whether an award will be reviewed under this section [Code 1942, § 6998-27] because of a change in conditions or a mistake in a determination of fact is discretionary with the commission. Hudgins v. Marine Welding & Repair Works, 237 Miss. 301, 114 So. 2d 767 (1959).

Refusal to reopen a compensation case for the introduction of further evidence was within the discretion of the workmen's compensation commission. Ainsworth v. Long-Bell Lumber Co., 233 Miss. 38, 101 So. 2d 100 (1958).

The workmen's compensation commission may exercise its sound discretion with reference to reopening a case, and so long as its discretion is not abused, its action in refusing to reopen the matter will not constitute reversible error. West's Estate v. Southern Bell Tel. & Tel. Co., 228 Miss. 890, 90 So. 2d 1 (1956).

2. Redetermination after review.

Workers' Compensation Commission's denial of an employee's right to reopen his previously settled workers' compensation claims was supported by substantial evidence because the settlement seemed fair and reasonable, and his termination soon after reaching the settlement did not constitute a mistake of fact that would have warranted reopening, as there was no proof that the employee had a reasonable expectation of continued employment at the time that he entered the settlement. Sims v. Ashley Furniture Indus., 964 So. 2d 625 (Miss. Ct. App. 2007).

Mississippi Workers' Compensation Act allows a party to petition the Mississippi Workers' Compensation Commission to review a compensation case, issue a new compensation order which may terminate, continue, reinstate, increase, or decrease such compensation, or award compensation, at any time prior to one year after date of last payment of compensation. Kemper Nat'l Ins. Co. v. Coleman, 812 So. 2d 1119 (Miss. Ct. App. 2002).

The claimant was not entitled to have his compensation claim reopened on the basis that the Workers' Compensation Commission based its decision on the inactions of his former attorney. Pennington v. U.S. Gypsum Co., 722 So. 2d 162 (Miss. Ct. App. 1998).

While the decision to reopen a case is within the discretion of the Workers' Compensation Commission, the Commission abused its discretion when it failed to even consider the applicability of § 71-3-53 when it decided not to reopen a case. Staples v. Blue Cross & Blue Shield of Miss., Inc., 585 So. 2d 747 (Miss. 1991).

The Workers' Compensation Commission had the power and authority to reopen a claim despite the fact that the claimant had accepted a lump-sum settlement and had signed a full release. Litigants and attorneys on both sides have a duty to fully inform the Commission in such settlements and where they fail to do so or where the Commission makes a "mistake of fact" that is detrimental to either party, there is the granted authority to deal with the mistake or the wrong. Thus, where the true facts regarding the extent of the claimant's medical recovery were not known to the Commission at the time the initial settlement was approved, the Commission had every right to believe that it had made a mistake of fact about the claimant's medical condition when it approved her lump-sum settlement, and therefore the Commission was justified in reopening the claim and in making a subsequent award of permanent total disability. Metal Trims Indus., Inc. v. Stovall, 562 So. 2d 1293 (Miss. 1990).

Commission did not abuse its discretion in refusing to reopen case of employee sustaining back injury at work, in light of thermogram whose results did not show changing condition but was merely new evidence of initially determined injury. Davis v. Scotch Plywood Co., 505 So. 2d 1192 (Miss. 1987).

Jurisdiction was vested in the Workmen's Compensation Commission upon the claimant's filing her original two motions to controvert, and jurisdiction remained vested in the commission throughout the hearings conducted by an administrative judge and through the time when he issued his order, since jurisdiction of workmen's compensation claims is vested totally completely and exclusively in the commission and such jurisdiction cannot pass back and forth from the commission to an administrative judge inasmuch as an administrative judge is merely a facility of the commission. Day-Brite Lighting Div., Emerson Elec. Co. v. Cummings, 419 So. 2d 211 (Miss. 1982).

In view of the attorney referee's finding that an examination and the written narrative report of the examining physician upset the previous medical findings, there was an abuse of discretion in the referee's refusal to allow the employer and its insurer to cross-examine the claimant about a false medical history given to the physician and to introduce other testimony relative to such history. Marshall v. Oliver Elec. Mfg. Co., 235 So. 2d 244 (Miss. 1970).

This section [Code 1942, § 6998-27] embraces an application to set aside an order approving a lump-sum settlement. Dapsco, Inc. v. Upchurch's Dependent, 243 Miss. 427, 138 So. 2d 287 (1962), overruled on other grounds, Banks v. Banks, 511 So. 2d 933 (Miss. 1987).

A commuted lump-sum payment of voluntary compensation does not preclude reopening of the case for a redetermination of the extent of disability. Armstrong Tire & Rubber Co. v. Franks, 242 Miss. 792, 137 So. 2d 141 (1962).

The purpose of this section [Code 1942, § 6998-27] is to permit the correction of erroneous determinations of fact. Armstrong Tire & Rubber Co. v. Franks, 242 Miss. 792, 137 So. 2d 141 (1962).

Under this section [Code 1942, § 6998-27] the commission may increase or decrease awards prospectively or retroactively during the continuance of disability. Komp Equip. Co. v. Clinton, 236 Miss. 569, 112 So. 2d 541 (1959).

This provision authorizes the commission to increase or decrease awards prospectively or retroactively, and gives the commission broad powers in adjusting awards. Jackson Ready-Mix Concrete v. Young, 236 Miss. 550, 111 So. 2d 255 (1959).

The workmen's compensation commission has the power to make a new finding increasing disability payments retroactive in its effect to the original date of the injury so as to change a percentage of disability found in previous order of the commission not appealed from. Roling v. Hatten & Davis Lumber Co., 226 Miss. 732, 85 So. 2d 486 (1956).

Where the employer and insurer in a brief on a former appeal stated that they owed compensation to one of the alleged widows and concluded that they should not appeal from the commissioner's order, the employer and compensation carrier were not estopped from denying that neither of the two alleged widows were entitled to compensation benefits where it appeared that nobody knew that a prior husband of one of the widows was alive and where neither of the alleged widows has changed her position. United Timber & Lumber Co. v. Alleged Dependents of Hill, 226 Miss. 540, 84 So. 2d 921 (1956).

Where each of two claimants filed claims as the widow of the deceased and the supreme court entered judgment in favor of one of the claimants and later a witness was found who was the husband of the successful claimant at the time she was married to the deceased, the supreme court remanded the cause to the circuit court to be by it remanded to the commission for a rehearing of the existing facts. Hill's Dependents v. United Timber & Lumber Co., 221 Miss. 473, 62 So. 2d 776 (1953).

3. Limitations period, generally.

With respect to a worker's motion to reopen the record in a previously adjudicated case, the statute of limitations had not begun to run against the worker because the employer admitted that it had never filed a form B-31 (Report of Payment and Settlement Receipt), and alternatively, the statute had been tolled because the employer had continuously furnished the worker's prescription drugs; however, the commission's decision to deny the motion to reopen had to be affirmed because the worker, although laid off, did not support the motion with any evidence that he had experienced an economic change in condition. Broadway v. Int'l Paper, Inc., 982 So. 2d 1010 (Miss. Ct. App. 2008).

Trial court did not err in finding the reinstatement of an employee's workers' compensation claim to be time barred under the one-year time period in Miss. Code Ann. § 71-3-53 and the two-year period in Miss. Code Ann. § 71-3-35, where even using the employee's calculation, the two-year deadline would have expired before she filed her motion for reinstatement. Edwards v. Wal-Mart, 930 So. 2d 1273 (Miss. Ct. App. 2006).

Employee's workers' compensation claim for injuries in 1992 and 1995 was barred as the employee had filed a B-31 form shortly after each injury that allowed the employer to close the claim one year after the form had been filed. Hancock v. Miss. Forestry Comm'n, 878 So. 2d 1058 (Miss. Ct. App. 2004).

Where the claimant received benefits for about three weeks after her accident, the statute of limitations in this section applied, rather than that of § 71-3-35(1). Taylor v. Salvation Army-Pascagoula Corps, 744 So. 2d 825 (Miss. Ct. App. 1999).

Where a Notice of Controversy was filed some months after the claimant's injury, it failed to properly controvert the claim and, as a consequence, it did not toll the statute of limitations that began to run when the employer subsequently filed a form B-31. ABC Mfg. Corp. v. Doyle, — So. 2d —, 1998 Miss. App. LEXIS 1118 (Miss. Ct. App. Dec. 30, 1998), reversed by, remanded by 749 So. 2d 43, 1999 Miss. LEXIS 270 (Miss. 1999).

The filing of an Entry of Appearance by the claimant's attorneys did not serve to toll the statute of limitations which began to run when the employer filed a form B-31 since the document, without additional action on the claimant's part, inadequately identified her intention to seek relief. ABC Mfg. Corp. v. Doyle, — So. 2d —, 1998 Miss. App. LEXIS 1118 (Miss. Ct. App. Dec. 30, 1998), reversed by, remanded by 749 So. 2d 43, 1999 Miss. LEXIS 270 (Miss. 1999).

In a workman's compensation action claimant's petition for payment of compensation for nursing services provided by petitioner's wife was not barred by the statute of limitations § 71-3-53, where the employer paid medical expenses up to and including the month when claimant petitioned to be furnished nursing services, and where the payment of these expenses constituted a payment of compensation for the purpose of tolling the one-year statute of limitations. City of Kosciusko v. Graham, 419 So. 2d 1005 (Miss. 1982).

The one-year statute of limitations contained in § 71-3-53 barred the claim of a worker's compensation claimant, who had been fitted with an artificial leg following a work-related accident in the scope of his employment, had required no medical treatment or service for a period of one year subsequent to the last treatment or payment of medical benefits, and had had no need for a new prosthetic device until more than one year after the last medical payment, where the claimant filed his claim more than one year after that payment. Barr v. Conoco Chems., Inc., 412 So. 2d 1193 (Miss. 1982).

Where claimant, injured on Jan. 15, 1960, signed final settlement report filed on Feb. 18, 1960, and filed claim for same injury on Mar. 20, 1961, and subsequently on Oct. 31, 1962 amended his claim to include injuries occurring on May 1, 1960, question of whether amendment related back to date of filing original claim so as to take it out of 1-year and 2-year limitations periods depended upon whether later injury was a new injury or further disability for previous injury, and this was a question of fact to be determined by commission. Yazoo Mfg. Co. v. Schaffer, 254 Miss. 35, 179 So. 2d 784 (1965).

The supplying or authorizing of medical benefits within the year allowed for reopening compensation cases tolls the statute. Turnage v. Lally's Swimming Pool Co., 247 Miss. 713, 159 So. 2d 84 (1963).

A barred claim is not revived by the furnishing or authorizing of medical services after the claim period has run. Turnage v. Lally's Swimming Pool Co., 247 Miss. 713, 159 So. 2d 84 (1963).

A claim for compensation by a claimant whose temporary total disability was due to a new back injury which aggravated a prior existing physical impairment was not barred by the one-year statute of limitations set out in this section [Code 1942, § 6998-27]. Fair Stores v. Bryant, 238 Miss. 434, 118 So. 2d 295 (1960).

Payment of medical expenses is a payment of compensation tolling limitation. Graeber Bros. v. Taylor, 237 Miss. 691, 115 So. 2d 735 (1959), error overruled 237 Miss. 691, 117 So. 2d 469.

The one-year period does not begin to run against an employee during his minority. Powe v. Jackson, 236 Miss. 11, 109 So. 2d 546 (1959).

The Workmen's Compensation Law evidences the legislative intent to put the same period of limitations on the payment of medical benefits as has been put on the payment of compensation. Trehern v. Grafe Auto Co., 232 Miss. 854, 100 So. 2d 786 (1958).

4. —After closing of case.

The statute of limitations was tolled where the claimant's new attorneys filed a petition for acceptance of representation and entry of appearance in which they noted their intention to represent the claimant in the proceedings before the commission seeking redress for her workplace injury, the petition included as an exhibit a copy of the notice of controversy previously filed by the employer on which the commission had never held a hearing, and the attachment to the notice recited generally that there was a controversy between the parties as to the nature and extent of the claimant's injuries. ABC Mfg. Corp. v. Doyle, 749 So. 2d 43 (Miss. 1999).

A finding by the Workers' Compensation Commission that there had been a change in conditions warranting the reopening of a case was supported by substantial evidence where the employee testified that his condition had worsened and that additional medical treatment and diagnostic procedures were necessary, the additional treatment and procedures established for the first time a definitive diagnosis of Meniere's Syndrome, the original award of a 5 percent permanent partial disability was made for loss of hearing only, the diagnosis of Meniere's Syndrome was perceived by the Commission to involve more than a simple loss of hearing, and the new order specifically cited a new finding of impairment to the body as a whole with concomitant loss of wage earning capacity. Georgia-Pacific Corp. v. Gregory, 589 So. 2d 1250 (Miss. 1991).

One-year limitations period established by § 71-3-53 is measured by reference to claimant's execution and filing of Form B-31, entitled "Report of Payment and Settlement Receipt," and operates to bar cause of action to recover additional compensation after limitations period has expired. Street v. South Carolina Ins. Co., 698 F. Supp. 662 (S.D. Miss. 1988).

The one-year period of limitation provided by this section [Code 1942, § 6998-27] does not begin to run until notice is given to the claimant by the filing of a form B-31 with the commission on behalf of the employer. Empire Home Bldrs. v. Guthrie, 187 So. 2d 17 (Miss. 1966).

The filing of Form B-31 with the workmen's compensation commissioner did not start the running of the one-year statute of limitations as to an employee who received no notice of such filing, either from the employer or the commission, and notwithstanding that Form B-5-11 was filed on behalf of employee more than one year after date of accident, the claim should have been considered on its merits. Nichols v. American Creosoting Co., 245 Miss. 414, 146 So. 2d 76 (1962).

The limitations period provided for in this section [Code 1942, § 6998-27] must be considered in connection with subsection (g) of Code 1942, § 6998-19, providing that no case shall be closed without notice to all parties interested and without giving to all such parties an opportunity to be heard. International Paper Co. v. Evans, 244 Miss. 49, 140 So. 2d 271 (1962).

As against a claimant who had refused to sign the final report and settlement receipt submitted to him, the one-year limitation period provided for in this section [Code 1942, § 6998-27] did not begin to run until he had received notice that the employer had filed with the workmen's compensation commission a final report and settlement receipt, properly filled out. International Paper Co. v. Evans, 244 Miss. 49, 140 So. 2d 271 (1962).

Even if a final report and settlement receipt, which was not signed by the claimant, was valid, act of carrier in sending claimant to a doctor for an examination constituted a voluntary reopening of the case, and since no final form closing the case had been filed up to the time the claim had been made, the claim was not barred by limitations. Shainberg's Black & White Store v. Prothro, 238 Miss. 444, 118 So. 2d 862 (1960).

Filing by an insurance carrier of a statement, indicating that a final report previously filed was considered ineffective, tolled the statute of limitations. Graeber Bros. v. Taylor, 237 Miss. 691, 115 So. 2d

735 (1959), error overruled 237 Miss. 691, 117 So. 2d 469.

Where the requirements of subsection (g) of Code 1942, § 6998-19 had been fully complied with by the employer and its insurance carrier, the workmen's compensation commission was without jurisdiction of a claim for compensation made more than 3 years after the closing of the case. Carter v. Wrecking Corp. of Am., 234 Miss. 559, 107 So. 2d 116 (1958).

Where a claimant had been paid some medical expenses and compensation benefits and, together with the carrier, had executed a form under which the claim was closed, a claim for additional medical benefits filed nearly four years later was barred by the statute of limitations. Trehern v. Grafe Auto Co., 232 Miss. 854, 100 So. 2d 786 (1958).

Before the statute of limitations provided by this section [Code 1942, § 6998-27] begins to run, there must be a compliance with the mandatory provision of Code 1942, § 6998-19(g). James F. O'Neil, Inc. v. Livings, 232 Miss. 118, 98 So. 2d 148 (1957); Shainberg's Black & White Store v. Prothro, 238 Miss. 444, 118 So. 2d 862 (1960).

This section [Code 1942, § 6998-27] does not apply unless there has been a compliance with Code 1942, § 6998-19(g), which provides that within 30 days after final payment of compensation has been made, employer shall send to the commission a notice stating that final payment has been made, the full amount of compensation paid, the name of the employee and of any other person to whom compensation has been paid, the date of the injury or death, and the date to which the compensation has been paid. Hale v. General Box Mfg. Co., 228 Miss. 394, 87 So. 2d 679 (1956).

It was not the intent of the legislature to require that there be a formal hearing by the commission in order to close employee's claim of voluntary payments, and the fact that no such hearing was held did not render statute which limited period of commencement of suit for additional compensation to within one year after receipt of final payment inapplicable. H.C. Moody & Sons v. Dedeaux, 223 Miss. 832, 79 So. 2d 225 (1955).

Where an employer made voluntary workmen's compensation payments to an injured minor employee, these were valid compensation payments, and the statute limiting power to review voluntary payments to a period of one year after last payment was applicable. H.C. Moody & Sons v. Dedeaux, 223 Miss. 832, 79 So. 2d 225 (1955).

Where a minor employee started a suit for additional compensation which was commenced more than one year after acceptance of last voluntary payment by employer, the action was barred by statute of limitations. H.C. Moody & Sons v. Dedeaux, 223 Miss. 832, 79 So. 2d 225 (1955).

5. —After rejection of claim.

Employee's motion to reinstate a workers' compensation claim on the docket was properly denied where the motion was barred by the one-year statute of limitations; after the employee's claim was dismissed for failure to comply with the procedural rules, the employee waited far more than one year to file the completed pre-hearing statement. Garcia v. Super Sagless Corp., 975 So. 2d 267 (Miss. Ct. App. 2007).

Where decedent's defendants in a worker's compensation proceeding did not timely perfect their appeal to the Circuit Court within the 30 days required by § 71-3-53, that court properly dismissed the case from its docket; the statute is mandatory as to the time when the appeal must be taken. Dependents of Townsend v. Dyer Woodturnings, Inc., 459 So. 2d 300 (Miss. 1984).

In an action regarding the denial of workmen's compensation death benefits the circuit court improperly dismissed a petition for appeal, where a motion requesting a review of the evidence by the commission which was filed within the statutory period for appealing the commission's order tolled the time for appeal until the commission entered its order on the motion; the error was harmless, however where the circuit court heard the appeal under the commission's order overruling the motion for review. Johnston v. Hattiesburg Clinic, P.A., 423 So. 2d 114 (Miss. 1982).

The one-year statute of limitations applies to the final rejection of a claim for compensation by the supreme court, as well as an appeal from a rejection before the workmen's compensation commission. Pryor v. Woodall Indus., Inc., 250 Miss. 672, 167 So. 2d 920 (1964).

While there is a division of authority as to whether or not the statute of limitations is tolled by the appeal, in view of the provisions of Code 1942, § 6998-26, which must be read and considered in conjunction with this section [Code 1942, § 6998-27], an applicant is entitled to file his application for a review of his compensation claim with the workmen's compensation commission within one year after the judgment of the supreme court finally rejects his claim. Pryor v. Woodall Indus., Inc., 250 Miss. 672, 167 So. 2d 920 (1964).

In proceeding for death benefits, where it was shown that the employee was murdered by a jilted suitor and that the only connection between her employment and the cause of her death was that she was on duty at the time she was shot and was merely informing the slayer of the rules of the telephone company which prohibited visitors in the operating room at the exchange, the commission did not abuse its discretion in refusing to open the case on the grounds of newly discovered evidence, which in general terms alleged that the employee's slayer was insane, particularly since such evidence would not change the result. West's Estate v. Southern Bell Tel. & Tel. Co., 228 Miss. 890, 90 So. 2d 1 (1956).

RESEARCH REFERENCES

Am Jur. 82 Am. Jur. 2d, Workmen's Compensation § 574.

25 Am. Jur. Pl and Pr Forms (Rev), Workmen's Compensation, Forms 1 et seq.

CJS. 101 C.J.S., Workers' Compensation §§ 1493, 1494 et seq.

Law Reviews. 1981 Mississippi Supreme Court Review; Administrative Law. 52 Miss. L. J. 377, June 1982.

1985 Mississippi Supreme Court Review—Administrative Law. 55 Miss. L. J. 735, December 1985.

Bradley, Time limitations which bar claims in Mississippi workers' compensation: a re-examination. 62 Miss. L. J. 511, Spring, 1993.

Higginbotham, Reopening and due process in claims review. 62 Miss. L. J. 609, Spring, 1993.

§ 71-3-55. Procedure before the commission.

(1) In making an investigation or inquiry or conducting a hearing, the commission shall not be bound by common law or statutory rules of evidence or by technical or formal rules or procedure, except as provided by this chapter, but may make such investigation or inquiry or conduct such hearing in such manner as best to ascertain the rights of the parties. Declarations of a deceased employee concerning the injury in respect of which the investigation or inquiry is being made or the hearing conducted shall be received in evidence and shall, if corroborated by other evidence, be sufficient to establish the injury.

(2) Hearings before the commission shall be open to the public and shall be stenographically reported or recorded and transcribed. The commission shall by regulations provide for the preparation of a record of the hearings and other proceedings.

(3) Unless otherwise ordered by the commission, hearings shall be conducted in the county where the injury occurred.

SOURCES: Codes, 1942, § 6998-28; Laws, 1948, ch. 354, § 22; Laws, 1950, ch. 412, § 11; reenacted without change, Laws, 1982, ch. 473, § 28; reenacted without change, Laws, 1990, ch. 405, § 29, eff from and after July 1, 1990.

JUDICIAL DECISIONS

1. In general.
2. Open hearings.
3. Evidence.
4. Rebuttal.
5. Review.

1. In general.

Unless denial of compensation is based on matters which are jurisdictional or in abatement, the compensation commission ordinarily should not grant a motion to dismiss where it has not heard all the pertinent evidence. Scott Builders, Inc. v. Layton's Dependent, 244 Miss. 641, 145 So. 2d 165 (1962).

Code 1942, §§ 6998-24 and 6998-28 do not require formal procedure or formal orders, and failure to accompany an order with a finding of fact is not fatal to its validity. Rivers Constr. Co. v. Dubose, 241 Miss. 527, 130 So. 2d 865 (1961).

The Workmen's Compensation Law is not invalid because proceedings before commission are not required to follow rules of evidence or procedure attributed to the courts. Walters v. Blackledge, 220 Miss. 485, 71 So. 2d 433 (Miss. 1954).

Where insurer took part in first compensation hearing and attorney-referee had rendered no opinion or finding on that hearing, and where an amended application was filed for a second hearing and due notice was given to insurer of such second hearing and he appeared and contested the amended application, the attorney-referee had power to conduct the second hearing. T.H. Mastin & Co. v. Russell, 214 Miss. 700, 59 So. 2d 321 (1952).

In a workman's compensation proceeding the credibility of witnesses was a fact to be determined by the commission. Barry v. Sanders Co., 211 Miss. 656, 52 So. 2d 493 (1951).

2. Open hearings.

Where the Workers' Compensation Commission failed to record and transcribe a hearing pertaining to an assessment against a school district in connection with winding up of the affairs of a workers' compensation fund, a judgment on the assessment would be reversed and the matter would be remanded to the Workers' Compensation Commission with directions to conduct a new hearing on the record. Jackson County Sch. Dist. v. South Miss. Workers' Comp. Fund, 749 So. 2d 962 (Miss. 1999).

3. Evidence.

Compensation may be allowed for disabling pain in the absence of positive medical testimony as to any physical cause whatever. When the patient complains of pain, the doctor usually takes the fact of pain for granted and the absence of physical findings to account for the pain will not necessarily bar compensation. In such cases, evidence of an accident followed by disabling pain and the absence of evidence as to the cause of the pain from objective medical findings may be sufficient as a basis for compensation, in the absence of circumstances tending to show malingering or indicating that the claimant's testimony as to pain is inherently improbable, incredible, unreasonable or untrustworthy. However, there is a great potential for abuse in claims which are based predominantly upon pain reported by the patient, particularly in circumstances where the patient's testimony or statement to the physician is the sole evidence of its continued presence. In these cases, it would be prudent to obtain additional medical evidence to either support or dispute the claim. Morris v. Lansdell's Frame Co., 547 So. 2d 782 (Miss. 1989).

The Workers' Compensation Commission, within legal limits, is the sole judge of the weight and sufficiency of the evidence. Evidence which is not contradicted by positive testimony or circumstances, and which is not inherently improbable, incredible, or unreasonable, cannot, as a matter of law, be arbitrarily or capriciously discredited, disregarded or rejected, even though the witness is a party or is interested; unless uncontradicted evidence is shown to be untrustworthy, it is to be taken as conclusive and binding on the triers of fact. Morris v. Lansdell's Frame Co., 547 So. 2d 782 (Miss. 1989).

The Supreme Court, under its inherent rule-making power, would supplement a previous order of the Workmen's Compensation Commission authorizing the admission of written medical reports and would provide prospective guidelines and safeguards for their use, to insure protection of the adversary system and the principle of non-admission of hearsay evidence under common law directives. Georgia-Pacific Corp. v. McLaurin, 370 So. 2d 1359 (Miss. 1979).

Inasmuch as under this section the Commission is not bound by common law or statutory rules of evidence, the admission of an affidavit of claimant's doctor was improper but harmless error, where the affidavit changed nothing which was in the doctor's deposition already in evidence but merely restated his interpretation of claimant's condition, the employer made no effort to impeach the affidavit or to recross-examine the physician, and the doctor had earlier been cross-examined. Dixie Contractors v. Ashmore, 349 So. 2d 532 (Miss. 1977).

Although the patient-physician communication privilege rule of evidence is not abolished by the Workmen's Compensation Law except insofar as it is specifically provided under Code 1942, § 6998-08, there is, however, under Code 1942, § 6998-28, a grant of authority to the workmen's compensation commission to relax, in its discretion, the traditional common law and statutory rules of evidence in order to obtain a full development of the facts concerning each claim; and, in the instant case the attorney referee did not abuse his discretion in refusing to relax the patient-physician communication privilege in order to let in testimony concerning the claimant's alleged pre-existing injury. Cooper's, Inc. v. Long, 224 So. 2d 866 (Miss. 1969).

Testimony given before the commission at a first hearing by the claimant, subsequently deceased, which was corroborated by others who were present and also by his wife, is admissible at a subsequent consolidated hearing of both the decedent's claim and the claim revived in the name of his administratrix and widow and children. Harbert Constr. Corp. v. Quimby's Dependents, 251 Miss. 738, 170 So. 2d 15 (1964).

The commission should not dismiss a claim at the close of the claimant's evidence, where the case is a close one and all the facts have not been developed. Scott Builders, Inc. v. Layton's Dependent, 244 Miss. 641, 145 So. 2d 165 (1962).

This section [Code 1942, § 6998-28] clearly authorized the admission in evidence of corroborated testimony of witnesses concerning complaints made by a fire spotter of the state forestry commission with respect to the pains he felt in his chest and heart attacks. Schilling v. Mississippi State Forestry Comm'n, 226 Miss. 858, 85 So. 2d 562 (1956).

In a workman's compensation proceeding where the parties had undertaken to enter into a stipulation as to all of the essential facts, it was proper for the attorney referee and the commission to consider their oral testimony of the claimant if it was deemed to be relevant and material. Elliott v. Ross Carrier Co., 220 Miss. 86, 70 So. 2d 75 (1954).

In workmen's compensation cases, the employee has an overall burden of proving facts prerequisite to recovery in every case. T.H. Mastin & Co. v. Mangum, 215 Miss. 454, 61 So. 2d 298 (1952).

The testimony of a claimant is competent to prove his claim. Lucedale Veneer Co. v. Rogers, 211 Miss. 613, 48 So. 2d 148 (1950), error overruled 211 Miss. 613, 53 So. 2d 69.

4. Rebuttal.

A claimant who rests his case without introducing medical testimony, in reliance on the employer's notice of intention to call the attending physician, is entitled, where the employer did not do so, to have the case reopened for the purpose of introducing such testimony. Wells-Lamont Corp. v. Watkins, 247 Miss. 379, 151 So. 2d 600 (1963).

Rebuttal evidence is admissible on behalf of claimant after he has rested his case, reserving the right of rebuttal. Fairley v. Harry Bennett Constr. Co., 241 Miss. 707, 133 So. 2d 15 (1961).

This section [Code 1942, § 6998-28] is designed to relax former rules of procedure and entitles a claimant who has rested to introduce rebuttal evidence. Fairley v. Harry Bennett Constr. Co., 241 Miss. 707, 133 So. 2d 15 (1961).

While it is better procedure for a claimant to put on in chief all his testimony necessary to make out a case, the attorney-referee did not clearly abuse his discretion in permitting the claimant to put on rebuttal testimony by a doctor who had previously testified when the claimant had put on his case in chief. Ingalls Shipbuilding Corp. v. King, 229 Miss. 871, 92 So. 2d 196 (1957).

5. Review.

An administrative law judge, as affirmed by the Workers' Compensation Commission and the circuit court, erred as a matter of law when he specifically stated that a hearing on an injured employee's motion to consider the need for additional medical treatment at the employer's expense under General Rule 9 was limited to whether the employee was suffering from improper medical treatment or lack of medical treatment, and then proceeded to make findings on maximum medical recovery and apportionment; an administrative law judge may not announce a limited purpose of a hearing, require the litigants to argue under limitation, and then decide the whole of the case including the time of maximum recovery apportionment and compensation. Monroe v. Broadwater Beach Hotel, 593 So. 2d 26 (Miss. 1992).

Where a finding of workmen's compensation commission on a disputed question of fact is supported by substantial evidence, the supreme court is not authorized to reverse its judgment. Sones v. Southern Lumber Co., 215 Miss. 148, 60 So. 2d 582 (1952).

The hearing examiner, as a trier of fact, hears the evidence and observes the witness, and his findings of fact and conclusions should be affirmed on judicial review unless manifestly wrong or contrary to the overwhelming weight of the evidence. Brookhaven Steam Laundry v. Watts, 214 Miss. 569, 55 So. 2d 381 (1951).

ATTORNEY GENERAL OPINIONS

Sections 71-3-55(2) and 71-3-93 leave to the discretion of the Commission the selection of both the method used to create adequate records of its hearings and other proceedings and the determination of which employees are necessary and essential to administering the work of the Commission. Porter, November 22, 1996, A.G. Op. #96-0766.

Any system of reporting or recording which generates a proper transcript of Commission proceedings would satisfy the requirements of 71-3-55(2). And while the Commission must ensure that its proceedings be reported or recorded and transcribed, the statute contains no requirement that the Commission employ and utilize certified or licensed court reporters to do so. Porter, November 22, 1996, A.G. Op. #96-0766.

RESEARCH REFERENCES

ALR. Admissibility of opinion evidence as to employability on issue of disability in health and accident insurance and workmen's compensation cases. 89 A.L.R.3d 783.

Am Jur. 82 Am. Jur. 2d, Workmen's Compensation §§ 480 et seq.

CJS. 100A C.J.S., Workers' Compensation §§ 1071 et seq.

§ 71-3-57. Witnesses and their fees.

The commission shall regulate, by rules published and available to the parties, the summoning, attendance, use, and compensation of witnesses, and determine the qualifications of specialists and their scale of fees as expert witnesses. Unless otherwise provided by the commission, witnesses summoned in a proceeding before the commission or whose depositions are taken shall receive the same fees and mileage as witnesses in civil cases in courts of record.

SOURCES: Codes, 1942, § 6998-29; Laws, 1948, ch. 354, § 23; reenacted without change, Laws, 1982, ch. 473, § 29; reenacted without change, Laws, 1990, ch. 405, § 30, eff from and after July 1, 1990.

Cross References — Witness fees, generally, see §§ 25-7-47 et seq.

JUDICIAL DECISIONS

1. In general.

There is no support in the Mississippi Workers' Compensation Act, or in the case law, for the proposition that an employer which itself is free of any wrongdoing can be held liable on an alter-ego theory for its workers' compensation carrier's bad faith failure to pay benefits; the law, in fact, is to the contrary. Toney v. Lowery Woodyards, 278 F. Supp. 2d 786 (S.D. Miss. 2003).

The commission did not abuse its discretion in allowing $100 for the claimant's two medical witnesses. International Paper Co. v. Evans, 293 So. 2d 12 (Miss. 1974).

RESEARCH REFERENCES

Am Jur. 82 Am. Jur. 2d, Workmen's Compensation § 537.

CJS. 100A C.J.S., Workers' Compensation § 1088-1090.

Law Reviews. 1982 Mississippi Supreme Court Review: Administrative Law: Workmen's Compensation. 53 Miss. L. J. 113, March 1983.

§ 71-3-59. Costs in proceedings brought without reasonable ground; penalties for pursuit of frivolous claim.

(1) If the court having jurisdiction of proceedings in respect of any claim or compensation order determined that the proceedings in respect of such claim or order have been instituted or continued without reasonable ground, the costs of such proceedings shall be assessed against the party who has so instituted or continued such proceedings.

(2) If the full commission determines that proceedings in respect to a claim have been instituted, continued or delayed, including by way of appeal to the commission, without reasonable ground, the full commission shall require the party who has so instituted, continued or delayed such proceedings or the attorney advising such party, or both, to pay the reasonable expenses, including attorney's fees, caused by such institution, continuance or delay to the opposing party. In addition to requiring the payment of reasonable expenses, including attorney's fees, to the opposing party, the commission may levy a civil penalty not to exceed Ten Thousand Dollars ($10,000.00) against

such party, or attorney advising or assisting such party, or both, payable to the commission. Any such civil penalty levied and collected by the commission shall be deposited into the Administrative Expense Fund provided for in Section 71-3-97 and any such penalty which is not voluntarily paid may be collected by civil suit brought by the commission.

SOURCES: Codes, 1942, § 6998-30; Laws, 1948, ch. 354, § 24; reenacted without change, Laws, 1982, ch. 473, § 30; Laws, 1987, ch. 361, § 5; reenacted without change, Laws, 1990, ch. 405, § 31; Laws, 1993, ch. 552, § 1, eff from and after passage (approved April 13, 1993).

RESEARCH REFERENCES

ALR. Attorneys' fees: cost of services provided by paralegals or the like as compensable element of award in state court. 73 A.L.R.4th 938.

Workers' compensation: availability, rate, or method of calculation of interest on attorney's fees or penalties. 79 A.L.R.5th 201.

Pre-emption, by § 301(a) of Labor-Management Relations Act of 1947 (29 USCS § 185(a)), of employee's state-law action for infliction of emotional distress. 101 A.L.R. Fed. 395.

Am Jur. 82 Am. Jur. 2d, Workmen's Compensation § 603.

CJS. 101 C.J.S., Workers' Compensation §§ 1448, 1449 et seq.

§ 71-3-61. Procedural authority of the commission.

(1) The commission and its hearing officers shall have power to preserve and enforce order during hearings; to issue subpoenas for, to administer oaths to, and to compel the attendance and testimony of witnesses or the production of books, papers, documents, and other evidence, or the taking of depositions before any designated individual competent to administer oaths; to examine witnesses; and to do all things conformable to law which may be necessary to enable them effectively to discharge the duties of their office.

(2) If any person in proceedings before the commission disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered to do so, any pertinent book, paper, or document, or refuses to appear after having been subpoenaed or upon appearing refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to law, the commission shall certify the facts to the court having jurisdiction in the place in which it is sitting, and the court shall thereupon in a summary manner hear the evidence as to the acts complained of and, if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such person upon the same condition as if the doing of the forbidden act had occurred with reference to the process of or in the presence of the court.

SOURCES: Codes, 1942, § 6998-31; Laws, 1948, ch. 354, § 25; reenacted without change, Laws, 1982, ch. 473, § 31; reenacted without change, Laws, 1990, ch. 405, § 32, eff from and after July 1, 1990.

Cross References — Courts' power to punish contempt generally, see § 9-1-17.

JUDICIAL DECISIONS

1. Discovery orders.
2. Departure from procedural rules.

1. Discovery orders.

Errors occurred when the administrative law judge acted contrary to his ruling at a hearing in which he found that an employee accident report was inadmissible because of discovery violations and when the Mississippi Workers' Compensation Commission chose to disregard the administrative hearing officer's decision as to the enforcement of its own procedural rules; however, the employee could not complain that the Commission's consideration of the employee accident report caused surprise or contend that trial by ambush would have occurred if the administrative hearing officer had allowed the report to be introduced at the hearing because she knew the document existed and what it contained. Thus, although the administrative law judge erred when he reopened the record to admit the employee accident report, the error did not rise to the level of denying the employee due process. Bermond v. Casino Magic, 874 So. 2d 480 (Miss. Ct. App. 2004).

After injured employee sought to compel production in discovery, the administrative law judge acted in accord with his statutory authority when he ordered employer to deliver surveillance videotapes it had made of the injured employee to the employee after the second round of depositions of the employee's doctors as the tapes were delivered to the employee well before his hearing and the employee could have re-deposed any party he wanted, using the tapes, before the hearing, so the employee was not prejudiced. Congleton v. Shellfish Culture, Inc., 807 So. 2d 492 (Miss. Ct. App. 2002).

2. Departure from procedural rules.

Award of workers' compensation benefits to an employee was overturned where, as a result of the Mississippi Workers' Compensation Commission's departure from its own procedural rules, certain medical records were entered into evidence that erroneously provided medical causation relating the employee's focal dystonia to the employee's work as a card dealer for the employer; the mandates of due process were not adhered to by the commission. Robinson Prop. Group v. Newton, 975 So. 2d 256 (Miss. Ct. App. 2007), writ of certiorari denied by 984 So. 2d 277, 2008 Miss. LEXIS 284 (Miss. 2008).

RESEARCH REFERENCES

Am Jur. 82 Am. Jur. 2d, Workers' Compensation §§ 63 et seq.

CJS. 100 C.J.S., Workers' Compensation § 701, 706-714, 717.

§ 71-3-63. Fees for legal and other services.

(1) No claim for legal services or for any other services rendered in respect of a claim or award for compensation, to or on account of any person, shall be valid unless approved by the commission or, if proceedings for review of the order of the commission in respect of such claim or award are had before any court, unless approved by such court. Any claim so approved shall, in the manner and to the extent fixed by the commission or such court, be a lien upon such compensation.

(2) Any person (a) who receives any fee, other consideration, or any gratuity on account of services so rendered, unless such consideration or gratuity is approved by the commission or such court, or (b) who makes it a business to solicit employment for a lawyer or for himself in respect of any

claim or award for compensation, shall be guilty of a misdemeanor and, upon conviction thereof, shall for each offense be punished by a fine of not more than One Thousand Dollars ($1,000.00) or by imprisonment not to exceed one (1) year, or by both such fine and imprisonment.

(3) Representation of one other than himself or herself before the commission shall be considered the practice of law, and all statutes applying to and regulating the practice in all other courts of law in this state shall likewise apply to practice before the commission, in so far as the qualifications of those practicing before the commission are concerned. This paragraph shall not be construed as tightening the rules of evidence which are otherwise relaxed in other sections of this chapter.

In no instance shall the amount recovered by an attorney for an appearance before the commission exceed twenty-five per centum (25%) of the total award of compensation. Such limitations, however, shall not be construed as applying to a fee awarded for additional services by any superior court. Legal services rendered where no motion to controvert has been filed by either employer or employee shall be considered as consultation, and that factor shall be taken into consideration in awarding a fee. In all instances, fees shall be awarded on the basis of fairness to both attorney and client. Although exceptions may be made in the interest of justice, it shall be deemed conducive to the best interest of all concerned for the commission to approve contracts for attorney fees voluntarily entered into between attorney and client, within the limitations hereinabove set out.

When an award of compensation becomes final and an attorney fee is outstanding, a partial lump sum settlement sufficient to cover the attorney fee approved therein by the commission shall be made immediately, from payments last to become due, and the deductions allowed by the law shall be borne equally by the attorney and the client.

SOURCES: Codes, 1942, § 6998-32; Laws, 1948, ch. 354, § 26; Laws, 1950, ch. 412, § 12; reenacted without change, Laws, 1982, ch. 473, § 32; reenacted without change, Laws, 1990, ch. 405, § 33, eff from and after July 1, 1990.

Cross References — Limitation of fees in claiming unemployment compensation benefits, see § 71-5-537.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.
2. Calculation of fee, generally.
3. —Additional services.
4. —Death of claimant pending final award.

1. In general.

The statutory language that the claimant's attorney was to receive his fee from the payments last to become due could only be met by providing all remaining payments to him, and there was no implied statutory limit that no more than 25 percent of any single periodic payment can be taken from the claimant for such purpose. City of Picayune v. Bennett, 724 So. 2d 1078 (Ct. App. 1998).

Supreme Court would not address workers' compensation claimants' argument that salary cap on claimants' attorney fees was unconstitutional, where claimants offered no authority or evidence to support claim. Warren v. Mississippi Workers' Comp. Comm'n, 700 So. 2d 608 (Miss. 1997).

On affirmance of award made by a circuit court, allowance of attorney's fee, of interest on each installment from its due date, and of statutory damages of five percent on the total of installments due and unpaid from the date of the circuit court's judgment to the date of affirmance by the supreme court, held proper. Central Elec. Power Ass'n v. Hicks, 236 Miss. 378, 112 So. 2d 230 (1959).

The court cannot vary the contract of the parties as to the compensation of an attorney for services. Shivers v. Biloxi-Gulfport Daily Herald, 236 Miss. 303, 110 So. 2d 359 (1959).

The workmen's compensation commission has the power to order a partial commutation of the weekly compensation payment allowed to the dependent of the injured person who died as a result of an accident arising out of and in the course of his employment for the purpose of paying attorney's fees. American Sur. Co. v. Boykin, 212 Miss. 310, 54 So. 2d 398 (1951).

Subsection (j) of Code 1942, § 6998-19, fully authorized the commission, if it thought it was for the best interests of the person entitled to compensation, to commute any part of the future compensation payments into a lump sum, either for the use of the employee's dependent or, as the case may be, for the purpose of paying the attorney's fee. American Sur. Co. v. Boykin, 212 Miss. 310, 54 So. 2d 398 (1951).

The provision of subsection (c) of this section [Code 1942, § 6998-32] has no reference to subsection (k) in § 13, ch. 354, Laws of 1948, as amended by Laws, 1950, ch. 412 (Code 1942, § 6998-19), which provides that if an employer has made advance payments of compensation he shall be entitled to be reimbursed out of any unpaid instalment or installments of compensation due. American Sur. Co. v. Boykin, 212 Miss. 310, 54 So. 2d 398 (1951).

2. Calculation of fee, generally.

The supreme court would allow the claimant's counsel one third of the compensation recovered. Davis v. Clark-Burt Roofing Co., 238 Miss. 464, 119 So. 2d 926 (1960).

Amounts paid before the controversy arose are to be excluded from the basis upon which the attorney's percentage is calculated. Mullins & Parker v. Rucker, 237 Miss. 330, 115 So. 2d 535 (1959).

Counsel for claimant was allowed as a fee for his services one third of the total amount collected in the case. Grubbs v. Revell Furn. Co., 234 Miss. 319, 106 So. 2d 390 (1958).

An attorney's fee of 33⅓ percent of the amount of the recovery was allowed to claimants' attorney for all services rendered in the case. Pennington v. Smith, 232 Miss. 775, 100 So. 2d 569 (1958).

Employee's motion for allowance of attorneys' fees sustained and fixed at 33⅓ percent of all compensation recovered, for all services rendered by counsel. Russell v. Southeastern Utils. Serv. Co., 230 Miss. 272, 92 So. 2d 544 (1957).

Fees for all services of a claimant's attorney in workmen's compensation cases should not exceed 33⅓ percent of the sum recovered. Prince v. Nicholson, 229 Miss. 718, 91 So. 2d 734 (1957).

Where an insurer of an employer made contracts subject to the workmen's compensation statute, the insurer could not object that the statute was unconstitutional in authorizing an immediate award for claimant's attorney of 25 percent of amount of compensation which would be paid if permanent partial disability should run for the full period, holding that such lump sum allowance for the attorney was properly based on assumption that the disability would continue for the full 450-week period. Jim Nix Cafeteria v. Burton, 226 Miss. 206, 84 So. 2d 164 (1955).

3. —Additional services.

On joint motion of the parties, and on motion of claimant's attorney, the supreme court would remand to the workmen's compensation commission for its consideration and approval of the proposed negotiated settlement, and for the allowance of attorneys' fee to the claimant's attorney in an amount not to exceed 33⅓ percent of any and all compensation recovered on behalf of claimant. Kelly v. Grief Bros. Cooperage Corp., 251 Miss. 34, 167 So. 2d 814 (1964).

The supreme court would sustain motion of claimant's attorney for the allowance of attorney's fee of 33⅓ percent of the amount of the recovery with the understanding that such fee would cover all services rendered in all courts and before the workmen's compensation commission. Smith v. Crown Rigs, Inc., 245 Miss. 311, 148 So. 2d 195 (1963).

Basis of attorney's fee to one obtaining reversal of denial of death benefits held to be benefits which accrued prior to the entry of an order or allowance, plus value of future benefits, but excluding the lump sum of $100 provided by statute, and funeral expenses. Goodnite v. Farm Equip. Co., 234 Miss. 342, 103 So. 2d 391 (1958), corrected on other grounds, 234 Miss. 356, 106 So. 2d 383 (1958), error overruled, 234 Miss. 360, 106 So. 2d 683 (1958).

Upon the affirmance of an award of workmen's compensation payments to the deceased employee's parents, who were found to be partially dependent upon the employee, claimant's motion for five percent statutory damages, and six percent interest on all installments which then had become due and remained unpaid, was sustained, as was their motion for attorneys' fees in the amount of one third of the award. Mid-State Paving Co. v. Farthing, 233 Miss. 333, 101 So. 2d 850 (1958).

Where the commission had allowed claimant's attorneys a fee of 25 percent of all the compensation payments awarded, the supreme court approved a contract allowing an additional fee equal to eight and one third percent of the amount of the award upon claimant's motion following an affirmance of the commission's award. Kahne v. Robinson, 232 Miss. 670, 100 So. 2d 132 (1958).

Motion by claimant's counsel for an increase in fees was allowed so as to total 33⅓ percent of the amount recovered for all services rendered where counsel had a written contract under which they were entitled to 25 percent of the amount recovered without an appeal, and 33⅓ percent of the amount recovered in case of appeal, which contract had been approved by the commission. Nicholas Co. v. Dodson, 232 Miss. 569, 99 So. 2d 666 (1958).

Where the record disclosed that claimant's attorneys had been allowed a fee of 25 percent for services rendered to claimant before the attorney-referee, the commission and the circuit court, upon motion, additional attorneys' fees were allowed in an amount which when added to the 25 percent would equal a total fee of 33⅓ percent of the amount recovered, for all services. B.C. Rogers & Sons v. Reeves, 232 Miss. 309, 98 So. 2d 875 (1957).

A claimant who was awarded only permanent partial disability benefits, whereas he was entitled to recover temporary total disability benefits until such time as he should recover from an operation and attain maximum recovery, was, upon motion, entitled to an allowance of additional attorney's fees in an amount not to exceed 33⅓ percent of the amount of compensation awarded. Houston Contracting Co. v. Reed, 231 Miss. 213, 95 So. 2d 231 (1957).

Where claimant's attorneys had agreed to represent claimant before the workmen's compensation commission for a fee in the sum of 25 percent of the total amount of a compensation awarded, and after successfully representing claimant before the commission, the attorneys successfully represented him in the circuit court and supreme court, the attorneys were entitled to a fee which, when added to the 25 percent contracted for, would not exceed the total fee for all services in the case of 33⅓ percent of the total recovery that might be had under the award. Jackson Ready-Mix Concrete v. Young, 230 Miss. 644, 93 So. 2d 645 (1957).

Where a motion filed by a claimant and his attorney asking the supreme court to approve a contract between them, by which the attorney would receive 50 percent of the amount recovered by the claimant, disclosed that the attorney had performed an unusual amount of legal work in a case, the contract was approved so as to allow the attorney a fee of only 33⅓ percent of the total amount recovered by the claimant. Mandle v. Kelly, 229 Miss. 327, 92 So. 2d 246 (1957).

Where an award to a widow for death benefits was affirmed by the supreme court, the attorney was entitled, as full compensation for all services rendered, to a fee in a sum equal to 33⅓ percent of all death benefits which accrued prior to the entry of an order, plus a sum of money equal to a partial lump sum settlement of 33⅓ percent of the present value of all future death benefits, such partial lump sum settlement to be determined and computed as provided by Code 1942, § 6998-19(j) and to be deducted from payments last to become due the claimants. Prentiss Truck & Tractor Co. v. Spencer, 228 Miss. 66, 87 So. 2d 272 (1956).

Limitation of 25 percent for attorneys fees is not applicable for additional services rendered before superior courts. Sunnyland Contracting Co. v. Davis, 221 Miss. 744, 74 So. 2d 858 (1954), corrected, 221 Miss. 744, 75 So. 2d 923 (1954).

Where attorneys for claimants of death benefits successfully prosecuted claim before workmen's compensation commission, the circuit court, and the supreme court, they were entitled to a fee of 33⅓ percent of the amount recovered, notwithstanding a contract for a fee of 50 percent. Sunnyland Contracting Co. v. Davis, 221 Miss. 744, 74 So. 2d 858 (1954), corrected, 221 Miss. 744, 75 So. 2d 923 (1954).

In a workmen's compensation proceeding the amount of attorney's fee which amounted to 40 percent of the total compensation award paid to the claimant is fair and just for legal services rendered by the attorney in respect of claim before the commission and for the additional services rendered by the attorney on two appeals. Hill v. United Timber & Lumber Co., 68 So. 2d 420 (Miss. 1953).

4. —Death of claimant pending final award.

Where claimant died during the pending of a suggestion of error before the supreme court, the attorney's fee is to be figured upon the amount accrued and due at claimant's death, rather than the full amount of the award in the supreme court's decision. Oden Constr. Co. v. Tyler, 247 Miss. 21, 153 So. 2d 294 (1963).

Where claimant died pending an appeal in which the award was affirmed, the court can base its award of an attorney's fee only on the amount accrued prior to claimant's death. L.B. Priester & Son v. McGee, 234 Miss. 471, 106 So. 2d 394 (1958).

RESEARCH REFERENCES

ALR. Handling, preparing, presenting, or trying workmen's compensation claims or cases as practice of law. 2 A.L.R.3d 724.

Workmen's compensation: attorney's fee or other expenses of litigation incurred by employee in action against third party tortfeasor as charge against employer's distributive share. 74 A.L.R.3d 854.

Attorneys' fees: cost of services provided by paralegals or the like as compensable element of award in state court. 73 A.L.R.4th 938.

Workers' compensation: availability, rate, or method of calculation of interest on attorney's fees or penalties. 79 A.L.R.5th 201.

Am Jur. 82 Am. Jur. 2d, Workers' Compensation §§ 604, 605.

25 Am. Jur. Pl and Pr Forms (Rev), Workmen's Compensation, Forms 1 et seq.

CJS. 101 C.J.S., Workers' Compensation §§ 1440 et seq.

§ 71-3-65. Record of injury or death.

Every employer shall keep a record in respect of any injury to an employee. Such record shall contain such information of disability or death in respect of such injury as the commission may by regulation require, and shall be available to inspection by the commission or by any state authority at such times and under such conditions as the commission may by regulation prescribe.

SOURCES: Codes, 1942, § 6998-33; Laws, 1948, ch. 354, § 27; reenacted without change, Laws, 1982, ch. 473, § 33; reenacted without change, Laws, 1990, ch. 405, § 34, eff from and after July 1, 1990.

RESEARCH REFERENCES

CJS. 101 C.J.S., Workers' Compensation §§ 1583-1586.

§ 71-3-66. Confidentiality of records.

The noncontroverted case medical reports, rehabilitation counselor reports and psychological reports of the commission, insofar as they refer to accidents, injuries and settlements, shall not be open to the public under the Mississippi Public Records Act of 1983, but only to the parties satisfying the commission of their interest in such records and the right to inspect them. Under such reasonable rules and regulations as the commission may adopt, the records of the commission as to any employee in any previous case in which such employee was a claimant shall be open to and made available to such claim to an employer or its insurance carrier which is called upon to pay compensation, medical expenses and/or funeral expenses, or to any party at interest, except that the commission may make such reasonable charge as it deems proper for furnishing information by mail and for copies of records.

SOURCES: Laws, 1984, ch. 369; reenacted without change, Laws, 1990, ch. 405, § 35, eff from and after July 1, 1990.

§ 71-3-67. Reports of injuries.

(1) Within ten (10) days after the fatal termination of any injury, the employer, if self-insured, or its carrier, shall file a report thereof with the commission on a form approved by the commission for this purpose.

In the event of an injury which shall cause loss of time in excess of the waiting period prescribed in Section 71-3-11, a report thereof shall be filed with the commission by the employer or carrier, on a form approved by the commission for this purpose, within ten (10) days after the prescribed waiting period has been satisfied.

Within ten (10) days after the employer or carrier knows, or reasonably should know, that an injury has resulted, or likely will result, in permanent disability or serious head or facial disfigurement, but which does not cause a loss of time in excess of the prescribed waiting period, a report thereof shall be filed with the commission on a form approved by the commission for this purpose.

(2) Injuries not otherwise provided for in this section, and for which only medical benefits are due, are not required to be reported to the commission. Records of such injuries shall be maintained by the employer, if self-insured, or its carrier, and shall contain the name and address of the employee, the date of the accident, the name and address of the employer, the nature of the injury,

the number of days lost and the total medical expense. These records shall be made available to the commission upon request.

If an injury provided for in this subsection subsequently causes a loss of time in excess of the prescribed waiting period, or causes permanent disability or serious head or facial disfigurement, it shall be reported within ten (10) days thereafter on the form approved for such claims.

Any additional reports shall be sent to the commission in such time and in such manner as the commission may prescribe.

(3) Filing may be by mail, electronic means or other form of delivery reasonably calculated to accomplish receipt by the commission. Any such report required to be filed hereunder shall be considered filed on the date of mailing, if filing is by mail, and on the date the electronic equipment being used acknowledges receipt of the material, if filing is by electronic means. Otherwise, the date of filing shall be the date of receipt by the commission.

(4) Whenever an employer or carrier fails or refuses to file any report required by this section within the time prescribed, the commission may, in its discretion, and after giving the employer or carrier notice and an opportunity to show cause to the contrary, levy a penalty against such employer or carrier not to exceed One Hundred Dollars ($100.00). This penalty shall be payable to the Administrative Expense Fund provided for by this chapter, and if not voluntarily paid, may be collected by civil suit brought by the commission.

In addition to the above civil penalty, a sum not to exceed One Hundred Dollars ($100.00) may, in the discretion of an administrative judge or the commission, be added to any award which may be made as a result of any injury not timely reported hereunder.

SOURCES: Codes, 1942, § 6998-34; Laws, 1948, ch. 354, § 28; Laws, 1950, ch. 412, § 13; reenacted without change, Laws, 1982, ch. 473, § 34; reenacted without change, Laws, 1990, ch. 405, § 36; Laws, 1995, ch. 582, § 1, eff from and after July 1, 1995.

Cross References — Administrative Expense Fund, see § 71-3-97.

JUDICIAL DECISIONS

1. In general.
2. Miscellaneous.

1. In general.

Employee was estopped from asserting the statute of limitations, Miss. Code Ann. § 71-3-35(1), as a defense because the employer failed to comply with the notice requirements of Miss. Code Ann. § 71-3-67(1), and the employee testified that he did not file a claim for workers' compensation because he was under the impression that the employer had filed it for him. Prentice v. Schindler Elevator Co., 13 So. 3d 1258 (Miss. 2009).

Worker had missed five days of work due to a work-related injury; therefore, the employer was required to file a notice of injury report, and by not filing the notice, the employer could not rely on the statute of limitations as a defense. Prentice v. Schindler Elevator Co., 14 So. 3d 59 (Miss. Ct. App. 2008), affirmed by, remanded by 13 So. 3d 1258, 2009 Miss. LEXIS 288 (Miss. 2009).

Employer was estopped from claiming that two-year statute of limitations on workers' compensation claim was not tolled, where employer failed to timely file statutorily-required notice of fatal termination of injury. Holbrook ex rel. Holbrook v. Albright Mobile Homes, Inc., 703 So. 2d 842 (Miss. 1997).

The circuit court erred in awarding the claimant a penalty under subd (4) of this section where the court, and not the commission, awarded compensation, and the case was remanded to the commission to determine the propriety of awarding the penalty. Huffman v. State, 324 So. 2d 759 (Miss. 1976).

The allowance of a penalty for failure of the employer to report the injury is discretionary with the commission. Gulf Park College v. Wheeler, 237 Miss. 155, 113 So. 2d 666 (1959).

The court will not determine whether a penalty should have been allowed for failure of the employer to report the injury where no request therefor was made to the commission. Gulf Park College v. Wheeler, 237 Miss. 155, 113 So. 2d 666 (1959).

2. Miscellaneous.

Employee's workers' compensation claim was barred by the statute of limitations and the employer was not required to report the employee's injury to the Workers' Compensation Commission under Miss. Code Ann. § 71-3-67. The employee missed approximately four hours of work as a result of the injury and there was no indication that the employer had any reason to suspect that the employee had sustained a permanent disability; there was also no indication that she suffered a serious head or facial disfigurement as a result of the fall. Murray v. Ingalls Shipbuilding/NGSS, 35 So. 3d 561 (Miss. Ct. App. 2010).

Employer and its carrier were not equitably estopped from asserting a statute of limitations defense for a workers' compensation claim because under Miss. Code Ann. §§ 71-3-67(1) and 71-3-11, the employer was not required to file a first notice of injury in that it had no reason to conclude that the claimant suffered a compensable injury in that the claimant had attributed his back pain to a prior back injury that was not work-related. Bynum v. Anderson Tully Lumber Co., 996 So. 2d 814 (Miss. Ct. App. 2008).

RESEARCH REFERENCES

ALR. Excessiveness or adequacy of damages awarded for injuries to head or brain. 50 A.L.R.5th 1.

Am Jur. 82 Am. Jur. 2d, Workers' Compensation § 378.

25 Am. Jur. Pl & Pr Forms (Rev), Workmen's Compensation, Forms 161-164.

CJS. 101 C.J.S., Workmen's Compensation § 1583-1586.

§ 71-3-69. Penalty for misrepresentation.

Any person who willfully makes any false or misleading statement or representation for the purpose of obtaining or wrongfully withholding any benefit or payment under this chapter is guilty of a felony and on conviction thereof may be punished by a fine of not to exceed Five Thousand Dollars ($5,000.00) or double the value of the fraud, whichever is greater, or by imprisonment not to exceed three (3) years, or by both fine and imprisonment.

SOURCES: Codes, 1942, § 6998-35; Laws, 1948, ch. 354, § 29; reenacted without change, Laws, 1982, ch. 473, § 35; reenacted without change, Laws, 1990, ch. 405, § 37; Laws, 1995, ch. 598, § 1, eff from and after July 1, 1995.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

§ 71-3-71. Compensation for injuries where third parties are liable.

The acceptance of compensation benefits from or the making of a claim for compensation against an employer or insurer for the injury or death of an employee shall not affect the right of the employee or his dependents to sue any other party at law for such injury or death, but the employer or his insurer shall be entitled to reasonable notice and opportunity to join in any such action or may intervene therein. If such employer or insurer join in such action, they shall be entitled to repayment of the amount paid by them as compensation and medical expenses from the net proceeds of such action (after deducting the reasonable costs of collection) as hereinafter provided.

The commencement of an action by an employee or his dependents (or legal representative) against a third party for damages by reason of the injury, or the adjustment of any such claim, shall not affect the right of the injured employee or his dependents (or legal representative) to recover compensation, but any amount recovered by the injured employee or his dependents (or legal representative) from a third party shall be applied as follows: reasonable costs of collection as approved and allowed by the court in which such action is pending, or by the commission of this state in case of settlement without suit, shall be deducted; the remainder, or so much thereof as is necessary, shall be used to discharge the legal liability of the employer or insurer; and any excess shall belong to the injured employee or his dependents. The employee or his dependents bringing suit against the third party must notify the employer or carrier within fifteen (15) days of the filing of such suit.

An employer or compensation insurer who shall have paid compensation benefits under this chapter for the injury or death of the employee shall have the right to maintain an action at law against any other party responsible for such injury or death, in the name of such injured employee or his beneficiaries, or in the name of such employer or insurer, or any or all of them. If reasonable notice and opportunity to be represented in such action by counsel shall have been given to the compensation beneficiary, all claims of such compensation beneficiary shall be determined in such action, as well as the claim of the employer or insurer. If recovery shall be had against such other party, by suit or otherwise, the compensation beneficiary shall be entitled to any amount recovered over and above the amount that the employer and insurer shall have paid or are liable for in compensation or other benefits, after deducting the reasonable costs of collection.

In case of settlement of any action before the trial thereof, such settlement shall be subject to the approval of the court wherein such action is pending, and settlement before an action is brought shall be subject to the approval of the commission. Distribution of the portion belonging to the dependents shall be made among such dependents in the manner provided in this chapter.

In case of liability of the employer or insurer to make payment to the state treasury under the second injury fund provisions, if the injury or death creates a legal liability against a third party, the employer or insurer shall have a right of action against such third party for reimbursement of any sum so paid into the state treasury, which right may be enforced in the action heretofore provided or by an independent action.

SOURCES: Codes, 1942, § 6998-36; Laws, 1948, ch. 354, § 30; reenacted without change, Laws, 1982, ch. 473, § 36; reenacted without change, Laws, 1990, ch. 405, § 38, eff from and after July 1, 1990.

JUDICIAL DECISIONS

1. In general.
2. Right of action against third person.
3. Parties to action.
4. Evidence of compensation.
5. Settlement.
6. Disbursement of money recovered.
7. —Legal services.

1. In general.

Miss. Code Ann. § 71-3-71 gives a carrier the right to intervene in a related lawsuit and also prevents a covered employee from gaining a double recovery if the employee receives benefits from a third party; however, the ability of a workers' compensation carrier to recover insurance proceeds has been limited by case law. Miss. Ins. Guar. v. Blakeney, 51 So. 3d 208 (Miss. Ct. App. 2009), reversed by 54 So. 3d 203, 2011 Miss. LEXIS 28 (Miss. 2011).

The right of an employer or insurer to recover under this section is not conditioned upon a lack of blameworthiness of the employer in the causation of the injury. Mississippi Food & Fuel Workers' Comp. Trust v. Tackett, 778 So. 2d 136 (Miss. Ct. App. 2000).

Where statute containing "benefits coordination" provision allowing employers to decrease workers compensation benefits to disabled employees who are eligible to receive wage loss compensation from other employer-funded sources did not specify whether provisions applied to workers injured prior to its effective date, and to nullify state Supreme Court decision holding that provision applied to such workers, state legislature passed into law statute requiring employers to pay to disabled employees workers compensation benefits that had been withheld in reliance on coordination statute, statute did not violate contract clause by substantially impairing obligation of employment contracts entered into after collective bargaining between employers and employees, nor did it, as result of retroactive payment provision, violate due process clause, since retroactive payment provision was rational means of meeting legitimate legislative purpose of correcting state court decision. GMC v. Romein, 503 U.S. 181, 112 S. Ct. 1105, 117 L. Ed. 2d 328 (1992).

An employer's workers' compensation carrier could not seek recovery under § 71-3-71 from an uninsured motorist claim asserted by an injured employee against the employer's uninsured motorist carrier. Cossitt v. Nationwide Mut. Ins. Co., 551 So. 2d 879 (Miss. 1989).

Neither employer nor employee is third party within meaning of act, because intent of legislature in enacting § 71-3-71 was to prevent employee from obtaining double recovery for injuries sustained in compensable accident; to allow claimant to successfully settle common-law action and also proceed under workers' compensation act would allow double recovery from employer for same injury, which would violate purpose of act. Sawyer v. Head, 510 So. 2d 472 (Miss. 1987).

In a third party suit by a workman against his employer's compensation carrier, the court stated that the merged identity of employer and carrier is clearly limited to matters of compensation payments and cannot be so construed to take away an employee's common law action against a third party tortfeasor. Stacy v. Aetna Cas. & Sur. Co., 334 F. Supp. 1216 (N.D. Miss. 1971).

Where a Mississippi carrier paid compensation to a Mississippi employee who was injured while working in Alabama, the applicable substantive law determining the carrier's subrogation rights in a personal injury action by the employee against a third party was Mississippi law under which compensation was paid. McDonald v. E.J. Lavino Co., 430 F.2d 1065 (5th Cir. Ala. 1970).

This provision does not impose an unreasonable and unconstitutional limitation upon the right to contract. Smith v. Bush, 312 F.2d 131 (5th Cir. 1963).

Failure to notify employer of an action against a third party tort feasor does not bar prosecution of claim for compensation. Bush v. Byrd's Dependents, 234 Miss. 782, 108 So. 2d 211 (1959).

2. Right of action against third person.

Because Mississippi Insurance Guaranty Association (MIGA) stepped into the shoes of an insolvent carrier and was bound by the rights, duties, and obligations of the insolvent insurer, it was not entitled to a credit for collection costs under that the insured received from her employer's uninsured motorist coverage; such recovery was explicitly forbidden under Miss. Code Ann. § 71-3-71(1), and MIGA's contentions that it should be bound only by the Mississippi Insurance Guaranty Association Law were without merit; nothing in the language of Miss. Code Ann. § 83-23-123(1) indicated that its provisions superseded any other law regarding a carrier's right to recovery. Miss. Ins. Guar. v. Blakeney, 51 So. 3d 208 (Miss. Ct. App. 2009), reversed by 54 So. 3d 203, 2011 Miss. LEXIS 28 (Miss. 2011).

Trial court erred in denying an employer's and insurers' request to intervene in an employee's negligence action against a doctor and a medical corporation. The employer and the insurers were entitled to intervene because the employee's paraplegia, which occurred after back surgery, was proximately caused by her on-the-job injury; moreover, the trial court was required to approve an settlement that was reached among the parties. Miss. Ins. Guar. Ass'n v. Brewer, 922 So. 2d 807 (Miss. Ct. App. 2005), writ of certiorari denied by 927 So. 2d 750, 2006 Miss. LEXIS 126 (Miss. 2006).

Subcontractor working under prime contractor is not immune from suit for accidental injury to employee of fellow contractor working on same job, because such subcontractor cannot benefit from exclusive remedy provision because it is "any other party" subject to suit at common law under § 71-3-71. Estate of Morris v. W.E. Blain & Sons, 511 So. 2d 945 (Miss. 1987).

Utility is third party against which wrongful death claims may be filed on basis of electrocution death of employee of contractor while trimming and cutting tops from trees under and around utility's high voltage powerline. Falls v. Mississippi Power & Light Co., 477 So. 2d 254 (Miss. 1985).

A wrongful death action was properly dismissed as against certain of decedent's fellow employees where the decedent was covered by the Workmen's Compensation Act; as to decedent's employer and its insurer, the trial court erred in not granting their demurrers and motions to dismiss where the employer, under § 71-3-9, was not subject to suit and where the declaration, which only sought to have the insurer assert any claim it might have, did not state a cause of action against the insurer; the trial court also erred in setting a thirty day limit within which the employer and its insurer were required to exercise their option to intervene in the suit as party plaintiffs based on their having paid benefits to decedent's widow. McCluskey v. Thompson, 363 So. 2d 256 (Miss. 1978).

Workmen's compensation commission order approving settlement of disputed compensation claim between employee and employer-carrier pursuant to Code 1972, § 71-3-29 and authorizing execution of any document required by employer-carrier "to evidence their release, acquittal and discharge herein," did not impliedly sanction the release of the employee's third-party rights, and the release so authorized could not validly effect any rights the employee might have against third parties. Hague v. Liberty Mut. Ins. Co., 504 F.2d 364 (5th Cir. 1974).

The fact that the plaintiff's employer, a self-insurer under the Workmen's Compensation Law, had paid his hospital and medical expenses did not deprive plaintiff of his right to seek recovery from a third party tortfeasor of that portion of such expenses as he might be able to show were reasonable and necessary in the light of his injury, even though such recovery was subject to his employer's subrogation demand. Bedwell v. Riddle, 345 F.2d 183 (5th Cir. 1965).

The employee of an agent, operating a car rental business on behalf of his principal, is also the employee of the principal and could not, after receiving compensation benefits, maintain a third-party action against the principal. Robertson v. Stroup, 254 Miss. 118, 180 So. 2d 617 (1965).

That both the corporation sued as the negligent third party and the employer corporation are owned by the same persons does not preclude suit. Index Drilling Co. v. Williams, 242 Miss. 775, 137 So. 2d 525, 8 A.L.R.3d 323 (1962).

An action for personal injuries may be maintained although defendant and plaintiff's immediate employer are engaged in a common project. Clark v. Luther McGill, Inc., 240 Miss. 509, 127 So. 2d 858 (1961).

3. Parties to action.

A workers' compensation carrier was not required to join in the employee's personal injury action prior to the time settlement was made in the trial in order to be entitled to receive any of the settlement proceeds under the Mississippi Workers' Compensation Act (§§ 71-3-1 et seq). Sneed v. Verdun, 611 So. 2d 947 (Miss. 1992).

The trial court was in error in not allowing an employer to intervene in the third party action brought by the heirs at law of the deceased employee against the third party tortfeasor, in order to recover the benefits actually paid by the employer under the requirements of the workmen's compensation law. Litton Sys. v. Murphree, 301 So. 2d 850 (Miss. 1974).

Under the provisions of this section [Code 1942, § 6998-36], employer's insurance carrier which has paid compensation benefits to dependents of deceased employee possessed a right of subrogation against a third-party tortfeasor and was entitled to intervene in an action brought by decedent's widow against the third-party tortfeasor. Smith Petro. Serv., Inc. v. Monsanto Chem. Co., 420 F.2d 1103 (5th Cir. 1970).

Intervention on the part of an insurance carrier in an action brought to recover damages for the wrongful death of an employee is not required by law but is optional on the part of the carrier. Kidwell v. Gulf, M. & O.R. Co., 251 Miss. 152, 168 So. 2d 735 (1964).

This provision makes the employer and his insurer proper but not necessary parties to an action against a negligent third person. Powe v. Jackson, 236 Miss. 11, 109 So. 2d 546 (1959).

In an action against shipper by rail for personal injuries sustained because of alleged improper manner in loading a flatcar, by an employee of consignee, neither the consignee nor its insurance carrier, who were alleged to be paying the employee workmen's compensation benefits and who received notice of the action, were necessary parties to the action. American Creosote Works v. Harp, 215 Miss. 5, 60 So. 2d 514, 35 A.L.R.2d 603 (1952).

4. Evidence of compensation.

There is no question for the jury to decide with reference to reimbursement of a compensation insurer who intervenes in a personal injury action brought by the compensation beneficiary of amounts paid the plaintiff beneficiary, for it is a matter of law and mandatory on the court alone to provide in its judgment for the distribution of any verdict rendered in strict accordance with this section [Code 1942, § 6998-36], and to grant an instruction which submitted the question of insurer's right to reimbursement constituted error. Merchants Co. v. Hutchinson, 199 So. 2d 813 (Miss. 1967).

Where the compensation insurer intervened in a personal injury action brought by the plaintiff beneficiary, statements by its counsel in his argument to the jury of the amount of money the insurer had paid the plaintiff, and the insurer's desire to recover such sum out of any verdict awarded the plaintiff, constituted prejudicial error. Merchants Co. v. Hutchinson, 199 So. 2d 813 (Miss. 1967).

In an action against a taxicab company filed by a bicyclist who threw his bicycle toward the curb to avoid a taxi which was speeding at an unlawful rate, evidence as to amount of money which the bicyclist received under workmen's compensation benefits was inadmissible. Coker v. Five-Two Taxi Serv., 211 Miss. 826, 52 So. 2d 835 (1951).

5. Settlement.

A workers' compensation trust was entitled to recover an amount paid for the funeral and medical expenses arising from the work-related death of an employee from a settlement between the adult daughter of the employee, acting as sole wrongful death beneficiary of her father, and several third parties whose negligence was alleged to have been a proximate contributing cause of the employee's death; the daughter could have pursued recovery for funeral and medical expenses as a part of her cause of action and, therefore, although she did not directly receive any compensation benefits because of her father's death, she did receive a real benefit based on the amount the trust paid in satisfaction of his medical bills and funeral expenses, since these obligations otherwise would have been a charge against her wrongful death recovery. Mississippi Food & Fuel Workers' Comp. Trust v. Tackett, 778 So. 2d 136 (Miss. Ct. App. 2000).

Approval by the commission of a settlement of a claim for compensation does not abdicate its jurisdiction over a settlement of the injured employee's negligence claim against a third person which the statute requires the commission to approve. Smith v. Bush, 312 F.2d 131 (5th Cir. 1963).

The legislative purpose in requiring approval by the commission of settlements of employee's claims against third party tort feasors was to insure the protection of employees in their compensation rights, to prevent improvident releases, and to preserve the subrogation and indemnity rights of the employer or insurer against such third parties. Powe v. Jackson, 236 Miss. 11, 109 So. 2d 546 (1959).

A settlement of an injured employee's claim against a third person before any action is brought, made without the commission's approval, is not binding on the employer or his insurer, although made upon notice to them. Powe v. Jackson, 236 Miss. 11, 109 So. 2d 546 (1959).

An employer or insurer paying workmen's compensation for the death of an employee is entitled to share in the proceeds of a settlement of a claim against a third party tort feasor for causing the employee's death only where the beneficiary of the death action is also a workmen's compensation beneficiary. United States Fid. & Guar. Co. v. Higdon, 235 Miss. 385, 109 So. 2d 329 (1959).

6. Disbursement of money recovered.

There should have been no distribution of funds from the settlement funds in a negligence action to appellees, an employee and his wife, because (1) a workers' compensation insurer paid the employee $ 27,729.21 in workers' compensation benefits for injuries that arose out of an automobile accident; (2) appellees brought the negligence action against the drivers of the vehicles that were involved in the accident; (3) the $ 25,000 settlement award from appellees' negligence suit should have been divided according to Miss. Code Ann. § 71-3-71, which required that a reasonable amount for the cost of collection should have been deducted, then the insurer should have been reimbursed up to the amount of its subrogation lien totaling $ 27,729.21; and (4) the amount of the lien was greater than the $ 25,000 settlement award. St. Paul Travelers Ins. Co. v. Burt, 982 So. 2d 992 (Miss. Ct. App. 2008).

Appellate court reversed a decision that denied an insurer's claim for reimbursement after an employee had settled with a third-party following its claim for workers' compensation benefits; under Miss. Code Ann. § 71-3-71, the insurer was entitled to reimbursement after deducting the costs of collection and attorneys fees. Federated Mut. Ins. Co. v. McNeal, — So. 2d —, 2006 Miss. LEXIS 123 (Miss. Mar. 30, 2006), opinion withdrawn by, substituted opinion at, remanded by 943 So. 2d 658, 2006 Miss. LEXIS 678 (Miss. 2006).

It was error for the trial court to bar the workers' compensation insurance carrier from receiving reimbursement of a settlement that the injured employee made with third-party tortfeasors, to recover the amounts that the carrier had paid to the employee in workers' compensation benefits, because Miss. Code Ann. § 71-

3-71 clearly and unambiguously provided for recovery in such situations; the trial court should not have applied the "made whole" doctrine to negate the clear statutory requirements of § 71-3-71. Federated Mut. Ins. Co. v. McNeal, 943 So. 2d 658 (Miss. 2006).

A workers' compensation carrier, which was also the uninsured motorist carrier, was not entitled to a credit on behalf of a deceased employee, where the employee's beneficiary had failed to recover anything from the party responsible for the employee's death. Harris v. Magee, 573 So. 2d 646 (Miss. 1990).

A workmen's compensation carrier was entitled to repayment of compensation benefits paid by it to an injured employee from punitive damages awarded the employee in a third party action, notwithstanding the contention that punitive damages were not awarded as compensation for the injury, since the insurer was statutorily entitled to repayment from the "net proceeds" of any action; the term "net proceeds" was broad enough to include any punitive damages that might be awarded. Mississippi Power Co. v. Jones, 369 So. 2d 1381 (Miss. 1979).

The trial court was in error in not allowing an employer to intervene in the third party action brought by the heirs at law of the deceased employee against the third party tortfeasor, in order to recover the benefits actually paid by the employer under the requirements of the workmen's compensation law. Litton Sys. v. Murphree, 301 So. 2d 850 (Miss. 1974).

When a recovery is made by a compensation beneficiary from a third-party wrongdoer whose liability carrier is also the compensation carrier of the beneficiary's employer, under the provisions of this section [Code 1942, § 6998-36] the balance of the proceeds remaining after payment of the costs of recovery shall be paid first to the compensation carrier to reimburse it in full for all benefits previously paid to the employee, with the remaining balance, if any, going to the employee. Tadlock v. United States Fid. & Guar. Co., 219 So. 2d 143 (Miss. 1969).

Money paid by the third party for an invalid release is to be credited against so much of the judgment recovered against such third party as may be payable to the injured employee after reimbursing the employer's insurer for workmen's compensation paid. Powe v. Jackson, 236 Miss. 11, 109 So. 2d 546 (1959).

The insurer has the right to receive, out of the proceeds of any judgment recovered from the third person, both compensation payments made to date and exoneration from future liability to the injured employee. Powe v. Jackson, 236 Miss. 11, 109 So. 2d 546 (1959).

An employer and his insurer are entitled to a pro tanto discharge of any future liability to the extent of payments to the employee under a judgment recovered against a third party tort feasor. Powe v. Jackson, 236 Miss. 11, 109 So. 2d 546 (1959).

When recovery is had by a compensation beneficiary from a third-party wrongdoer, the balance of the proceeds remaining after the payment of collection costs shall be used to discharge all the liability of the employer or insurer including that to accrue in the future as well as that already paid or accrued, and where the liability of the employer or insurer is not ascertainable at the time of recovery, the net proceeds of such recovery remaining after payment of collection costs and the reimbursement of the employer or insurer to that date, shall be paid over to the compensation beneficiary, whereupon the employer and insurer are authorized to suspend payment of such compensation benefits as they may be liable for under any provision of the Workmen's Compensation Law until such suspended benefits equal the amount of a third-party recovery. The employer or insurer's subrogation rights also extend to any possible death benefits arising in the case. Richardson v. United States Fid. & Guar. Co., 233 Miss. 375, 102 So. 2d 368 (1958).

7. —Legal services.

Since § 71-3-71 requires that the court in which the third party action is pending shall be the forum for determining questions or issues concerning the distribution of settlement proceeds, chancery court was without jurisdiction over law firm's actions seeking, on equitable theories, apportionment of costs and fees, and recovery for legal services rendered by the law firm on behalf of Worker's Compensation insurer in third party action brought in Federal District Court by a covered employee for injuries sustained in the course of the employee's employment. Owen & Galloway v. Travelers Ins. Co., 499 So. 2d 776 (Miss. 1986).

Since under § 71-3-71 the Worker's Compensation insurance carrier cannot be charged with a portion of the employee's cost of recovery in a third party action, a law firms complaint seeking, on equitable theories, apportionment of costs and fees, and recovery for legal services rendered by the firm on behalf of a worker's compensation carrier in a third party action brought by a covered employee for injuries sustained in the course of the employee's employment, failed to state a claim on which relief could be granted. Owen & Galloway v. Travelers Ins. Co., 499 So. 2d 776 (Miss. 1986).

In a third-party action brought by an injured employee, it was wrong and an abuse of discretion on the part of the trial judge to allow an attorney's fee of one third of a manifestly worthless judgment and to provide for the full payment of the fee before the insurance carrier or the injured employee received anything. United States Fire Ins. Co. v. Hill, 209 So. 2d 440 (Miss. 1968).

The words "amount recovered" as used in this section [Code 1942, § 6998-36] were intended by the legislature to mean any amount collected, and it was not the legislature's intention that the attorney representing the injured employee in a third-party action should under any circumstances have the entire amount recovered and that neither the insurance carrier nor the employee should receive anything; and a judgment of the lower court which provided that the employee's attorneys were entitled to reasonable fees in an amount stated, which sum was to be payable from the first proceeds collected on the judgment, that after payment of the attorney's fees any further "recovery under said judgment" should be used to discharge the legal liability of the insurance carrier under the Workmen's Compensation Law, and that if there were "any excess recovered under said judgment" the same should be paid to the injured employee was amended on appeal to allow the attorneys only one-third of any partial payment made on the judgment with the remainder first to be paid to the insurance carrier in reimbursement and the balance thereafter to be paid to the employee. United States Fire Ins. Co. v. Hill, 209 So. 2d 440 (Miss. 1968).

It was error to allow an intervening workmen's compensation carrier what it paid for legal services performed when the insurer intervened in a wrongful death action. Kidwell v. Gulf, M. & O.R. Co., 251 Miss. 152, 168 So. 2d 735 (1964).

RESEARCH REFERENCES

ALR. Right to maintain malpractice suit against injured employee's attending physician notwithstanding receipt of workmen's compensation award. 28 A.L.R.3d 1066.

Workmen's compensation: attorney's fee or other expenses of litigation incurred by employee in action against third party tortfeasor as charge against employer's distributive share. 74 A.L.R.3d 854.

Modern status of effect of state workmen's compensation act on right of third-person tortfeasor to contribution or indemnity from employer of injured or killed workman. 100 A.L.R.3d 350.

Liability of employer with regard to inherently dangerous work for injuries to employees of independent contractor. 34 A.L.R.4th 914.

Right of health or accident insurer to intervene in workers' compensation proceeding to recover benefits previously paid to claimant or beneficiary. 38 A.L.R.4th 355.

Third-party tortfeasor's right to have damages recovered by employee reduced by amount of employee's workers' compensation benefits. 43 A.L.R.4th 849.

Workers' compensation law as precluding employee's suit against employer for third person's criminal attack. 49 A.L.R.4th 926.

Wilful, wanton, or reckless conduct of employee as ground of liability despite bar of workers' compensation law. 57 A.L.R.4th 888.

"Dual Capacity Doctrine" as basis for employee's recovery for medical malpractice from company medical personnel. 73 A.L.R.4th 115.

Workers' compensation: third-party tort liability of corporate officer to injured workers. 76 A.L.R.4th 365.

Right of employer or workers' compensation carrier to lien against, or reimbursement out of, uninsured or underinsured motorist proceeds payable to employee injured by third party. 33 A.L.R.5th 587.

Exclusive remedy provision of Federal Employees' Compensation Act (5 USCS sec. 8116(c)) as precluding recovery of contribution or indemnity from the United States by third-party tortfeasors for sum expended in satisfying or settling suit by injured government employee. 12 A.L.R. Fed. 616.

Am Jur. 82 Am. Jur. 2d, Workers' Compensation §§ 53 et seq.

82 Am. Jur. 2d, Workers' Compensation §§ 296, 434 et seq.

25 Am. Jur. Pl and Pr Forms (Rev), Workmen's Compensation, Forms 1 et seq.

CJS. 101 C.J.S., Workmen's Compensation §§ 1666 et seq.

Law Reviews. 1978 Mississippi Supreme Court Review: Administrative Law. 50 Miss. L. J. 11, March 1979.

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1979 Mississippi Supreme Court Review: Insurance. 50 Miss. L. J. 813, December 1979.

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1984 Mississippi Supreme Court Review: Administrative Law. 55 Miss L. J. 25, March, 1985.

Practice References. Bender's Labor and Employment Bulletin (Matthew Bender).

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§ 71-3-73. Second injury fund.

If an employee who has previously lost, or lost the use of, one (1) hand, one (1) arm, one (1) foot, one (1) leg, or one (1) eye, becomes permanently and totally incapacitated through the loss, or loss of use, of another member or organ, the employer shall be liable only for the compensation payable for such second injury. In addition to such compensation and after the completion of the payment therefor, the employee shall be paid the remainder of the compensation that would be due for permanent total incapacity, out of a special fund known as the "Second Injury Fund," and created for such purpose in the following manner:

In every case of compensable death of an employee under this chapter, the employer or, if insured, his insurance carrier shall pay to the commission the sum of Three Hundred Dollars ($300.00) except in cases where there is no dependency, then there shall be paid to the commission the sum of Five Hundred Dollars ($500.00) to be deposited with the State Treasurer for the benefit of said fund. A suspension of said payments of Three Hundred Dollars ($300.00) per death shall be made when the total amount of all such payments, together with the accumulated interest thereon, equals or exceeds Three Hundred Fifty Thousand Dollars ($350,000.00), and no further contributions to said fund shall be made except in cases where there is no dependency.

Whenever, thereafter, the amount of such sum shall be reduced below One Hundred Fifty Thousand Dollars ($150,000.00) by reason of payments made pursuant to this section, then such contributions of Three Hundred Dollars ($300.00) per death shall be resumed forthwith and shall continue until such sum, together with accumulated interest thereon, shall again amount to Three Hundred Fifty Thousand Dollars ($350,000.00); and the commission shall direct the distribution thereof.

SOURCES: Codes, 1942, § 6998-37; Laws, 1948, ch. 354, § 31; Laws, 1956, ch. 345, § 1; Laws, 1960, ch. 278; reenacted without change, Laws, 1982, ch. 473, § 37; Laws, 1983, ch. 497, § 1; Laws, 1987, ch. 361, § 6; reenacted without change, Laws, 1990, ch. 405, § 39, eff from and after July 1, 1990.

JUDICIAL DECISIONS

1. In general.

Where minor brothers were partially dependent for their support upon a deceased workman killed in the course of his employment, and were entitled to compensation benefits, the employer's insurer was required to pay only $150 to the commission for the second injury fund, and the supreme court would pretermit consideration of the question of the insurer's right to a refund without prejudice to the insurer to make appropriate requests therefor to the commission. United States Fid. & Guar. Co. v. Fortner, 234 So. 2d 636 (Miss. 1970).

RESEARCH REFERENCES

Am Jur. 82 Am. Jur. 2d, Workers' Compensation §§ 332, 333 et seq., 615.

CJS. 99 C.J.S., Workmen's Compensation §§ 179, 180.

101 C.J.S., Workmen's Compensation §§ 1465, 1466, 1469-1473.

§ 71-3-75. Security for payment of compensation.

(1) **Insurance of liability:** — An employer liable under this chapter to pay compensation shall insure payment of such compensation by a carrier authorized to insure such liability in this state unless such employer shall be exempted from doing so by the commission.

(2) **Exemption from insuring:** — An employer desiring to be exempt from insuring its liability for compensation shall make application to the commission, showing its financial ability to pay such compensation and agreeing as a condition for the granting of the exemption to faithfully report all injuries under compensation according to law and the requirement of the commission, and to comply with the provisions of this chapter and the rules of the commission pertaining to the administration thereof; whereupon the commission by written order may make such exemption. The commission may from time to time require further statement of financial ability of such employer to pay compensation and may, upon ten (10) days' notice in writing, for financial reasons or for failure of the employer to faithfully discharge its obligations according to the agreements contained in its application for exemption, revoke the order granting such exemption, in which case such

employer shall immediately insure its liability as otherwise required under this chapter. As a condition for the granting of an exemption, the commission shall have authority to require the employer to furnish such security as the commission may consider sufficient to insure payment of all claims of such employer under compensation. State agencies qualified as self-insured status shall not be required to furnish any security to insure or guarantee payment of claims or expenses and shall not be required to establish and maintain reserves for claims incurred but not reported and expenses associated therewith, as a condition for the granting or continuation of an exemption as herein provided. Where the security is in the form of a bond or other personal guaranty, the commission may, at any time either before or after the entry of an award upon at least ten (10) days' notice and opportunity to be heard, require the sureties to pay the amount of the award, the same to be enforced in like manner as the award itself may be enforced. Where an employer procures an exemption as herein provided and thereafter enters into any form of agreement for insurance coverage with an insurance company or interinsurer not licensed to operate in this state, its conduct shall automatically operate as a revocation of such exemption. An order exempting an employer from insuring its liability for compensation shall be null and void if the application contains a financial statement which is false in any material respect. The commission shall revoke the self-insurance permit if the employer is found to have directly or indirectly induced an employee to forego his right to workers' compensation benefits.

(3) **Pooling of liabilities:** — The commission may, under such rules and regulations as it prescribes, permit two (2) or more employers engaged in a common type of business activity or pursuit, or having other reasons to associate, to enter into agreements to pool their liabilities under this section for the purpose of qualifying as group self-insurers, and, in conjunction therewith, to enter into agreements to pool any other liabilities to their employees, and each employer member of such approved group shall be classified as a self-insurer. A self-insured group under this section shall be comprised of employer members of the same bona fide trade association or trade group. Such trade association or trade group shall be domiciled in the State of Mississippi, shall have been in existence for five (5) or more consecutive years as of the date of application for an approved group and shall not be comprised solely of employer members who are affiliates of a person possessing controlling interest in such affiliates.

SOURCES: Codes, 1942, § 6998-38; Laws, 1948, ch. 354, § 32; reenacted without change, Laws, 1982, ch. 473, § 38; Laws, 1988, ch. 560; reenacted without change, Laws, 1990, ch. 405, § 40; Laws, 2004, ch. 347, § 1; Laws, 2006, ch. 526, § 1, eff from and after passage (approved Apr. 3, 2006.)

Amendment Notes — The 2004 amendment, in (2), added "as otherwise required under this chapter" to the first sentence, inserted "the commission" and "of such employer" in the second sentence, and made minor stylistic changes; and in (3), inserted "group" preceding "self-insurers" in the first sentence, and added the last two sentences.

Cross References — Application of the workers' compensation self-insurer guaranty association law to employers who are self-insurers under the provisions of this section, see § 71-3-153.

Application of this section to the definition of "self-insurer", see § 71-3-157.

Requirement that all self-insurers be and remain members of the workers' compensation self-insurer guaranty association as a condition of their authority under this section, see § 71-3-159.

Power of Mississippi Workers' Compensation Self-insurer Guaranty Association to assess member self-insurers amounts necessary to pay obligations of Association, see § 71-3-163.

Power of the workers' compensation commission to suspend or revoke the authority to self-insure granted under this section, see § 71-3-167.

JUDICIAL DECISIONS

1. In general.
2. Insurance by carrier.
3. Self-insurer.
4. Failure to insure.

1. In general.

The requirement that an employer must secure payment of compensation means that he must have in effect an insurance policy complying with the Workmen's Compensation Law, or that he must qualify as a self-insurer. Taylor v. Crosby Forest Prods. Co., 198 So. 2d 809 (Miss. 1967).

2. Insurance by carrier.

Where the employer and his insurance carrier have paid all the costs and statutory damages which were assessed against them upon their failure to successfully prosecute their appeal, and it was agreed that they would pay installments of the award of compensation as and when the same payments became due and payable, and the employee stipulated in writing that concurrence in the motion to cancel the supersedeas appeal bond insofar as surety thereon was concerned, the supreme court would sustain the motion to cancel the supersedeas bond. Watkins v. Taylor, 219 Miss. 637, 69 So. 2d 406 (1954).

The applicable provisions of the Workmen's Compensation Law are automatically written into insurance policy by operation of the law. National Sur. Corp. v. Kemp, 217 Miss. 560, 65 So. 2d 840 (1953).

Where claimant was employed by partnership on a yearly basis under a contract requiring him to take full charge of gin during ginning season, and where it appeared that injuries arose when one of the partners directed the claimant to erect banners for such partner who was a candidate for sheriff, statement signed by such partner and prepared by one of the attorneys for insurance carrier was admissible as evidence before attorney referee. National Sur. Corp. v. Kemp, 217 Miss. 560, 65 So. 2d 840 (1953).

3. Self-insurer.

Where the employer secured the payment of compensation to his employees by qualifying as a self-insurer, the remedy of an employee arises only under the Workmen's Compensation Law, and that statutory remedy being exclusive, no action at law is available to the employee. Taylor v. Crosby Forest Prods. Co., 198 So. 2d 809 (Miss. 1967).

The workmen's compensation commission alone is vested with authority to revoke or nullify an employer's status as a self-insurer, and trial courts have no such authority. Taylor v. Crosby Forest Prods. Co., 198 So. 2d 809 (Miss. 1967).

4. Failure to insure.

Decedent's employer was not entitled to immunity from suit under Miss. Code Ann. § 71-3-7 because it did not indirectly secure workers compensation coverage for its employees by reimbursing a timber company, for whom the employer was a subcontractor, for the workers compensation coverage it obtained for the employer's employees. The court rejected the employer's argument that it was entitled to "down-the-line" immunity because it assumed that it was the legislative intent not to create this immunity. Lamar v.

Thomas Fowler Trucking, Inc., 956 So. 2d 911 (Miss. Ct. App. 2006), affirmed by 956 So. 2d 878, 2007 Miss. LEXIS 279 (Miss. 2007).

When accident happened to an employee, the employer had no compensation insurance and did not apply to the commission for a policy under the assigned risk plan, the employee had a right to bring a common-law action for damages in view of the fact that the employer failed to comply with the Workmen's Compensation Law. McCoy v. Cornish, 220 Miss. 577, 71 So. 2d 304 (1954).

ATTORNEY GENERAL OPINIONS

The Workers' Compensation Commission may accept certificates of deposit in lieu of surety bonds for companies that are self-insured; in such case, the Office of State Treasurer is the proper place for safekeeping of the security. Clark, June 14, 2002, A.G. Op. #02-0227.

RESEARCH REFERENCES

Am Jur. 82 Am. Jur. 2d, Workers' Compensation § 608.

CJS. 100 C.J.S., Workers' Compensation §§ 639-642, 668, 692-697 et seq.

§ 71-3-77. Insurance policy regulations.

(1) Every contract for the insurance of the compensation herein provided, or against liability therefor, shall be deemed to be made subject to the provisions of this chapter, and provisions thereof inconsistent with the chapter shall be void. Such contract shall be allowed to offer deductibles on all liability of the assured under and according to the provisions of this chapter, notwithstanding any agreement of the parties to the contrary. However, the payments of the claims, including the deductible amounts, shall be made directly from the insurance company to the employee, except for medical benefits which shall be paid to the medical provider. A copy of such payments shall be forwarded to the employer. The insurance company shall collect the deductible from the employer as shall be provided in the contract between the employer and the insurer. No such policy shall be subject to nonrenewal, or cancelled by the insurer within the policy period, until a notice in writing shall be given to the commission and to the insured, fixing the date on which it is proposed to cancel it or declaring that the company does not intend to renew the policy upon expiration date. Notice to the insured shall be served personally or by registered or certified mail. Notice to the commission shall be provided in such manner and on such form as the commission may prescribe or direct. No such cancellation or nonrenewal shall be effective until thirty (30) days after the service of such notice on the insured and the provision of notice to the commission, unless the employer has obtained other insurance coverage, in which case such policy shall be deemed cancelled as of the effective date of such other insurance, whether or not such notice has been given.

The insured may also cancel such a policy on the day that the insured either (a) returns the policy to the agent, or (b) signs and delivers to the agent a "lost policy release." If the insured desires to cancel a policy before the policy has become effective, he may cancel the policy by written notice of cancellation to the agent or company without return of the policy or a release.

(2) In any case where the employer is not a self-insurer, in order that the liability for compensation imposed by this chapter may be most effectively discharged by the employer and in order that the administration of this chapter in respect of such liability may be facilitated, the commission shall by regulation provide for the discharge, by the carrier or carriers for such employer, of such obligations and duties of the employer in respect of such liability imposed by this chapter upon the employer as it considers proper in order to effectuate the provisions of this chapter. For such purpose (a) notice to or knowledge of an employer of the occurrence of the injury shall be notice to or knowledge of the carrier or carriers; (b) jurisdiction of the employer by the commission or any court under this chapter shall be jurisdiction of the carrier or carriers; and (c) any requirement by the commission or any court under any compensation order, finding, or decision shall be binding upon the carrier or carriers in the same manner and to the same extent as upon the employer.

SOURCES: Codes, 1942, § 6998-39; Laws, 1948, ch. 354, § 33; Laws, 1972, ch. 396, § 1; reenacted, Laws, 1982, ch. 473, § 39; reenacted without change, Laws, 1990, ch. 405, § 41; Laws, 1992, ch. 577, § 5; Laws, 2007, ch. 366, § 1, eff from and after July 1, 2007.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the first and second sentences of (1). The word "this" was substituted for "the" so that "inconsisent with the chapter" now reads "inconsistent with this chapter" and "the provisions of the chapter" now reads "the provisions of this chapter." The Joint Committee ratified the correction at its August 5, 2008, meeting.

JUDICIAL DECISIONS

1. In general.
2. Construction of coverage.
3. Notice of cancellation.

1. In general.

There is no support in the Mississippi Workers' Compensation Act, or in the case law, for the proposition that an employer which itself is free of any wrongdoing can be held liable on an alter-ego theory for its workers' compensation carrier's bad faith failure to pay benefits; the law, in fact, is to the contrary. Toney v. Lowery Woodyards, 278 F. Supp. 2d 786 (S.D. Miss. 2003).

Under Mississippi law, carrier which provided workers' compensation insurance both to claimant's employer and claimant's alleged borrowing employer had no legitimate or arguable reason to initially deny benefits, and thus was liable for bad faith denial, notwithstanding its arguments that it had independent legitimate reasons, including dispute over whether each insured was claimant's employer, not to pay under either policy; such reasons were irrelevant given that statutory requirements were met such that carrier had obligation to promptly pay benefits regardless of which of its insureds was claimant's employer. Rogers v. Hartford Acc. & Indem. Co., 133 F.3d 309 (5th Cir. 1998).

Under Mississippi law, when employer has knowledge of workers' compensation claimant's injury, formal notice to employer of occurrence of injury is not needed to trigger carrier's obligation to provide benefits, and this knowledge is imputed to carrier without any formal notification to carrier. Rogers v. Hartford Acc. & Indem. Co., 133 F.3d 309 (5th Cir. 1998).

The provisions of this section [Code 1942, § 6998-39] with reference to the force and effect of insurance provided for under the Workmen's Compensation Law has no application to a case where the supreme court had held that the employers, at the time of claimant's injury, were not under the Workmen's Compensation Law. Eaton v. Joe N. Miles & Sons, 238 Miss. 605, 119 So. 2d 359 (1960).

The applicable provisions of the Workmen's Compensation Law are automatically written into insurance policy by operation of the law. National Sur. Corp. v. Kemp, 217 Miss. 560, 65 So. 2d 840 (1953).

2. Construction of coverage.

In view of the common-law rule, which was not changed by the Workmen's Compensation Law, that partners are jointly and severally liable for partnership obligations, and the provisions of this section [Code 1942, § 6998-39], a carrier which had written a compensation policy for one of the partners in the partnership was liable for compensation benefits to the partnership employee. United States Fid. & Guar. Co. v. Collins, 231 Miss. 319, 95 So. 2d 456 (1957), corrected, 231 Miss. 341, 96 So. 2d 456 (1957).

Since a compensation policy secured in his own behalf by one of the members of a partnership doing subcontracting work covered the compensation rights of injured partnership employee, the secondary liability of the prime contractor and its carrier did not take effect as a direct obligation, upon the ground that the partnership failed to secure coverage of its employees. United States Fid. & Guar. Co. v. Collins, 231 Miss. 319, 95 So. 2d 456 (1957), corrected, 231 Miss. 341, 96 So. 2d 456 (1957).

Where claimant was employed by partnership on a yearly basis under a contract requiring him to take full charge of gin during ginning season, and where it appeared that injuries arose when one of the partners directed the claimant to erect banners for such partner who was a candidate for sheriff, statement signed by such partner and prepared by one of the attorneys for insurance carrier was admissible as evidence before attorney-referee. National Sur. Corp. v. Kemp, 217 Miss. 560, 65 So. 2d 840 (1953).

3. Notice of cancellation.

By signing the lost policy release, the employer canceled coverage consistent with the provisions for immediate cancellation set out in Miss. Code Ann. § 71-3-77 (1)(b); under this section, a workers' compensation insurer must give the insured 30 days notice of intent to cancel a policy unless the insured signs and delivers a lost policy release. Stingley v. Redland Ins. Co., 943 So. 2d 86 (Miss. Ct. App. 2006).

An insurer achieved an effective policy cancellation, notwithstanding that the notice of cancellation was not sent by registered mail as required by the statute, where the employer obtained other insurance coverage with another insurance carrier through its alter ego. Liberty Mut. Ins. Co. v. Holliman, 765 So. 2d 564 (Miss. Ct. App. 2000).

The purpose of the provisions of this section [Code 1942, § 6998-39] that no workmen's compensation insurance policy shall be canceled within the period of coverage unless a notice is filed with the commission, and shall not be effective until 30 days after service of notice, is to give assurance to the commission that eligible employees are protected under the act. Arender v. National Sales, Inc., 193 So. 2d 579 (Miss. 1966), motion granted, 195 So. 2d 90 (Miss. 1967).

Where the statute provides that every contract for insurance of compensation shall be deemed to be made subject to the provision of Workmen's Compensation Law, and that no such policy shall be cancelled until due notice in writing is given to the commission, and no such cancelation shall be effective until thirty days after service of such notice unless the employer obtained other insurance, the statute was applicable to binder issued by insurer. T.H. Mastin & Co. v. Russell, 214 Miss. 700, 59 So. 2d 321 (1952).

RESEARCH REFERENCES

ALR. Insurance carrier's liability for part of employer's liability attributable to violation of law or other misconduct on his part. 1 A.L.R.2d 407.

Validity and construction of liability policy provision requiring insured to reimburse insurer for payments made under policy. 29 A.L.R.3d 291.

Modern status of rules requiring liability insurer to show prejudice to escape liability because of insured's failure or delay in giving notice of accident or claim or in forwarding suit papers. 32 A.L.R.4th 141.

CJS. 100 C.J.S., Workers' Compensation §§ 639-642, 668, 695 et seq.

§ 71-3-79. Acceptance of premium by carrier and estoppel.

Acceptance of a premium on a policy securing to an employee compensation, either alone or in connection with other insurance, shall estop the carrier so accepting from pleading that the employment of such employee is not covered under this chapter or that the employment is not carried on for pecuniary gain.

When any member of a partnership, firm, or association who does or does not perform manual labor, and where there is coverage of fellow employees, elects to take coverage under the provisions of this chapter, the intent of the insured as well as acceptance by the carrier shall be shown by endorsement to the policy. Any such affirmative action by the parties shall entitle said members or officers to the benefits enjoyed by an employee under this chapter. Every executive officer elected or appointed and empowered in accordance with a charter and bylaws of a corporation, other than nonprofit charitable, fraternal, cultural, or religious corporations or associations, shall be an employee of such corporation under this chapter, provided that said executive officer may reject said coverage by giving notice in writing to the carrier of this election not to be covered as an employee.

Any such executive officer of a nonprofit charitable, fraternal, cultural, or religious corporation or association may, notwithstanding any other provision of this chapter, be brought within the coverage of its insurance contract by any such corporation or association by specifically including such executive officer in such contract of insurance. The election to bring such executive officer within the coverage shall continue for the period such contract of insurance is in effect, and during such period such executive officers thus brought within the coverage of the insurance contract shall be employees of such corporation or association under this chapter.

SOURCES: Codes, 1942, § 6998-40; Laws, 1948, ch. 354, § 34; Laws, 1950, ch. 412, § 14; Laws, 1964, ch. 444; reenacted without change, Laws, 1982, ch. 473, § 40; reenacted without change, Laws, 1990, ch. 405, § 42, eff from and after July 1, 1990.

JUDICIAL DECISIONS

1. In general.
2. Personnel covered.
3. Necessity of endorsement.
4. Estoppel.

1. In general.

This statute applies where the relation of employment exists. Dawson's Dependents v. Delta W. Exploration Co., 245 Miss. 335, 147 So. 2d 485 (1962).

2. Personnel covered.

A claimant was not exempted from coverage under the statute, notwithstanding that she was elected as assistant executive secretary of the employer, thereby making her an officer, and that she signed a certificate of exemption of coverage under the workers' compensation law, where she was elected as an officer of the company simply to subject her to such exemption, thereby saving the company money on workers' compensation premiums, and she was threatened with losing her job if she did not comply by signing the waiver. Financial Inst. Ins. Serv. v. Hoy, 770 So. 2d 994 (Miss. Ct. App. 2000).

That a workmen's compensation insurance policy extends to executives does not render the insurer liable for compensation awarded to officers serving without pecuniary remuneration affording a basis for paying premiums. Le-Co Gin Co. v. Stratton, 241 Miss. 623, 131 So. 2d 450 (1961).

The second paragraph of this section [Code 1942, § 6998-40] clearly manifests a legislative intent to make possible the coverage of officers of a corporation who exercised executive functions only, and who performed no duties as an ordinary employee. M.E. Badon Refrigeration Co. v. Badon, 231 Miss. 113, 95 So. 2d 114 (1957).

Where a lumber company was making deductions for workmen's compensation from purchase price paid the owner of sawmill for lumber, and the company's insurance carrier's premium was not based on the payroll of the sawmill, this section [Code 1942, § 6998-40] did not render the carrier liable for death of the sawmill's employee. Durham v. Deemer Lumber Co., 227 Miss. 461, 86 So. 2d 343 (1956).

Where the claimant was a working partner of a firm which had not obtained compensation coverage by compliance with the provisions of the Workmen's Compensation Law, his injury was not compensable. American Sur. Co. v. Cooper, 222 Miss. 429, 76 So. 2d 254 (1954).

3. Necessity of endorsement.

The intent of an employer to take coverage under the provisions of the Workmen's Compensation Law as an employee, as well as the acceptance of coverage by the insurer, must be shown by indorsement to the policy, and in the absence of such an indorsement the insurer is not liable to the heirs of the deceased employer. Sullivan v. Heirs of Sullivan, 192 So. 2d 277 (Miss. 1966).

An insurer who has knowingly received the proper premium cannot claim noncoverage of an employee admitted to partnership in the insured firm because the policy was not endorsed to that effect. Phyfer Furn. Co. v. Phyfer, 242 Miss. 767, 137 So. 2d 186 (1962).

4. Estoppel.

Cable lineman supervisor was entitled to worker's compensation benefits, although he was subcontractor and not employee, where owner of company for which subcontractor was performing job knew subcontract was being performed by 6 workmen and had agreed to provide workers' compensation coverage for them, even though owner did not know that subcontractor himself was one of crew members. Champion Cable Constr. Co. v. Monts, 511 So. 2d 924 (Miss. 1987).

Where an insured had formed a partnership upon the advice of the insurer's agent in order to obtain assigned risk workmen's compensation insurance, and he had informed the agent of a prior heart attack as his reason for requiring risk insurance, and the policy issued named the insured as an active partner and imposed an 8 percent surcharge on account of the risk, the failure of the insurer through its agent, to notify the insured that it would not write the assigned risk policy, instead issuing a policy purporting to comply with the explicit requirements of the application, changing the position of the insured to his detriment, and where the insurer continued to accept premiums and surcharges, the insurer was estopped from pleading that the insured was ineligible to recover benefits when he suffered a heart attack 5 years after the policy was issued, notwithstanding the absence of a partnership indorsement on the policy.

Carter v. Carter, 246 So. 2d 520 (Miss. 1971).

In the absence of proof of the existence of the relationship of insurer and insured, the insurer's acceptance of the premium does not operate as an estoppel. Sullivan v. Heirs of Sullivan, 192 So. 2d 277 (Miss. 1966).

Where an advance premium deposit is made by an employer covering a list of employees and this advance premium deposit is accepted by the insurance carrier and a workmen's compensation policy is issued, the insurance carrier is estopped under the provisions of this section [Code 1942, § 6998-40] to plead that the person or persons on which the policy was issued were ineligible to receive benefits, after liability has attached by reason of the accident to one of the listed employees. Tallco, Inc. v. Queenan, 253 Miss. 709, 178 So. 2d 665 (1965).

Where an employee sustaining fatal injuries while working in foreign country was an employee of Mississippi employer under contracts executed in Mississippi for temporary services outside of the state, and the insurance carrier had accepted the premium on a policy securing compensation to such employees of the employer, the insurance carrier was estopped from asserting that the injured employee's employment was not covered by the statute. Dawson's Dependents v. Delta W. Exploration Co., 245 Miss. 335, 147 So. 2d 485 (1962).

The estoppel provided by this section [Code 1942, § 6998-40] does not extend to the contention that the employment is one to which the Workmen's Compensation Law does not apply. Valley Towing Co. v. Allen, 236 Miss. 51, 109 So. 2d 538 (1959).

A compensation carrier which issued a policy to a corporation insuring, by virtue of a separate clause, salesmen at a time when the corporation had only two salesmen, both of whom were also stockholders and officers, and which had admittedly received premiums based upon the wages of the secretary-salesman, was estopped to deny that the secretary-salesman, whose death arose out of and in the course of his employment while doing nonsupervisory work, was not covered by the Workmen's Compensation Law. M.E. Badon Refrigeration Co. v. Badon, 231 Miss. 113, 95 So. 2d 114 (1957).

RESEARCH REFERENCES

Am Jur. 82 Am. Jur. 2d, Workers' Compensation § 627.

CJS. 100 C.J.S., Workers' Compensation § 746, 752-756, 758.

§ 71-3-81. Notice of coverage.

Every employer who has secured compensation under the provisions of this chapter shall keep notices posted in a conspicuous place or places in and about his place or places of business, in accordance with a form prescribed by the commission, stating that such employer has secured the payment of compensation in accordance with the provisions of this chapter. Such notices shall contain the name and address of the carrier, if any, with whom the employer has secured payment of the compensation and the date of the expiration of the policy.

SOURCES: Codes, 1942, § 6998-41; Laws, 1948, ch. 354, § 35; reenacted without change, Laws, 1982, ch. 473, § 41; reenacted without change, Laws, 1990, ch. 405, § 43, eff from and after July 1, 1990.

RESEARCH REFERENCES

CJS. 99 C.J.S., Workers' Compensation §§ 237, 238.

§ 71-3-83. Civil and criminal penalties for failure to secure payment of compensation.

(1) Any employer required to secure the payment of compensation under this chapter who fails to secure such compensation is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars ($1,000.00), or by imprisonment for not more than one (1) year, or by both such fine and imprisonment. If the employer is a corporation, the president, secretary and treasurer thereof shall be also severally liable to such fine or imprisonment as herein provided for the failure of such corporation to secure the payment of compensation; and such president, secretary and treasurer shall be severally personally liable, jointly with such corporation, for any compensation or other benefit which may accrue under this chapter in respect to any injury which may occur to any employee of such corporation while it shall so fail to secure the payment of compensation as required by this chapter.

(2) Any uninsured employer who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secretes or destroys any property belonging to such employer after one of his employees has been injured within the purview of this chapter, and with intent to avoid the payment of compensation under this chapter to such employee or his dependents, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars ($1,000.00), or by imprisonment for not more than one (1) year, or by both such fine and imprisonment. If the employer is a corporation, the president, secretary and treasurer thereof shall be also severally liable to such penalty of imprisonment as well as jointly liable with such corporation for such fine.

(3) This section shall not affect any other liability of the employer under this chapter.

(4) In addition to the criminal penalties set forth above, and under the same circumstances, terms and conditions as set forth in subsections (1) and (2), the commission may assess a civil penalty in an amount to be determined by the commission on a case by case basis, but not to exceed Ten Thousand Dollars ($10,000.00). Any civil penalty levied and collected by the commission shall be deposited into the Administrative Expense Fund provided for in Section 71-3-97, and any penalty not voluntarily paid may be collected by civil suit brought by the commission.

SOURCES: Codes, 1942, § 6998-42; Laws, 1948, ch. 354, § 36; reenacted without change, Laws, 1982, ch. 473, § 42; reenacted without change, Laws, 1990, ch. 405, § 44; Laws, 1993, ch. 552, § 2, eff from and after passage (approved April 13, 1993).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. Standard of proof.

In a case where it was decided that two owners should have procured workers' compensation insurance for a logging business, the preponderance of the evidence standard was properly used in making this determination under Miss. Code Ann. § 71-3-5, rather than the clear and convincing proof standard in Miss. Code Ann. § 71-3-83. White v. Jordan, 11 So. 3d 755 (Miss. Ct. App. 2008), writ of certiorari denied by 12 So. 3d 531, 2009 Miss. LEXIS 289 (Miss. 2009), writ of certiorari denied by 2009 Miss. LEXIS 297 (Miss. June 25, 2009).

RESEARCH REFERENCES

Am Jur. 82 Am. Jur. 2d, Workers' Compensation § 608.

CJS. 101 C.J.S., Workmen's Compensation §§ 1489-1492.

§ 71-3-85. Workers' compensation commission.

(1) There is hereby created a commission to be known as the workmen's compensation commission, consisting of three (3) members, who shall devote their entire time to the duties of the office. The governor shall appoint the members of the commission, by and with the consent of the Mississippi State Senate, one (1) for a term of two (2) years, one (1) for a term of four (4) years, and one (1) for a term of six (6) years. Upon the expiration of each term as above set forth, the governor shall appoint a successor for a term of six (6) years, and thereafter the term of office of each commissioner shall be for six (6) years. One (1) member shall be a person who by reason of his previous vocation or affiliation can be classed as a representative of employers, and one (1) member shall be a person who by reason of his previous vocation or affiliation can be classed as a representative of employees. One (1) member shall be an attorney at law of recognized ability with at least five (5) years' active practice in Mississippi prior to his appointment. The governor shall designate the chairman of the commission, whose term of chairman shall run concurrently with his appointment as a commissioner.

The chairman shall be the administrative head of the commission and shall have the final authority in all matters relating to assignment of cases for hearing and trial and the administrative work of the commission and its employees, except in the promulgation of rules and regulations wherein the commission shall act as a body, and in the trial and determination of cases as otherwise provided.

Upon the expiration of the term of a commissioner, he shall continue to serve until his successor has been appointed. Because cumulative experience is conspicuously essential to the proper administration of a workmen's compensation law, it is declared to be in the public interest to continue workmen's compensation commissioners in office as long as efficiency is demonstrated. A commissioner may be removed for cause prior to the expiration of his term, but shall be furnished a written copy of the charges against him and shall be accorded a public hearing.

Each member of the commission and each administrative law judge shall receive an annual salary fixed by the legislature.

(2) A vacancy in the commission, if there remain two (2) members of it, shall not impair the authority of such two (2) members to act. In case of illness or continued absence for other reasons, the same authority of such two (2) members shall apply.

(3) The commission shall have the powers and duties necessary for effecting the purposes of this chapter, including the powers of a court of record for compelling the attendance of witnesses, examining them under oath, and compelling the production of books, papers, documents and objects relevant to the determination of a claim for compensation, and the power to adopt rules and regulations and make or approve the forms relating to notices of injuries, payment of claims and other purposes. The authority of the commission and its duly authorized representatives to investigate and determine claims for compensation shall include the right to enter the premises where an injury occurred, to ascertain its causes and circumstances.

(4) The office of the commission shall be situated in the City of Jackson, but hearings may be held at such places as it may deem most convenient for the proper and speedy performance of its duties. The commission is authorized, if it deems it necessary for the convenient and efficient dispatch of business, to lease office space and facilities in other than publicly owned buildings.

(5) The commission shall adopt detailed rules and regulations for implementing the purposes of this chapter at hearings attended by the main parties interested. Such rules, upon adoption, shall be published and be at all reasonable times made available to the public and, if not inconsistent with law, shall be binding upon those participating in the responsibilities and benefits of the workmen's compensation law.

(6) The commission shall adopt or approve the forms required for administering the chapter, such notices of injury, application for benefits, receipts for compensation and all other forms needed to assure the orderly and prompt operation of the law, and may require the exclusive use of any or all such approved forms.

SOURCES: Codes, 1942, § 6998-43; Laws, 1948, ch. 354, § 37; Laws, 1950, ch. 412, § 15; Laws, 1956, ch. 345, § 2; Laws, 1958, ch. 478; Laws, 1962, ch. 474, § 1; Laws, 1966, ch. 445, § 18; Laws, 1980, ch. 475, § 2; reenacted, Laws, 1982, ch. 473, § 43; reenacted without change, Laws, 1990, ch. 405, § 45, eff from and after July 1, 1990.

Editor's Note — Chapter 408 of Laws, 1984 (§ 71-3-1) changed the title of the Workmen's Compensation Law to "Workers' Compensation Law" and provided that the words "workmen's compensation" shall mean "workers' compensation" and "commission" shall mean "workers' compensation commission".

Cross References — Exemption of workers' compensation commission from provisions of open meetings law, see § 25-41-3.

JUDICIAL DECISIONS

1. In general.
2. Adoption of rules.
3. Failure to act.

1. In general.

Workers' compensation claimants failed to show that system of appointment of Commissioners to Workers' Compensation Commission, which required that one Commissioner be classified by prior affiliation or vocation as representative of employer, second Commissioner as representative of employees, and third Commissioner have no affiliation, injected bias into system. Warren v. Mississippi Workers' Comp. Comm'n, 700 So. 2d 608 (Miss. 1997).

While the Administrative Judge is generally, within the Workers' Compensation Commission, the individual who conducts the hearing and hears the live testimony, the Commission itself is, in law, the finder of the facts, and on judicial review, the Commission's findings and decisions are subject to the normal deferential standards, notwithstanding the Administrative Judge's actions. Walker Mfg. Co. v. Cantrell, 577 So. 2d 1243 (Miss. 1991).

The Workers' Compensation Commission has no authority to grant declaratory judgments, render advisory opinions, or try equitable issues, or other issues, outside the statutes. Bullock v. Roadway Express, Inc., 548 So. 2d 1306 (Miss. 1989).

The workmen's compensation commission, and not the attorney referee, is the trier of facts in compensation cases, and this section [Code 1942, § 6998-43] specifically provides for hearings to be held before a three-man commission, and at least two commissioners must agree before an adjudication of the facts and an award can be made, and the commission shall act in a body. Bruton v. Mississippi Workmen's Comp. Comm'n, 253 Miss. 694, 178 So. 2d 673 (1965).

2. Adoption of rules.

An injured employee's claim for worker's compensation was properly dismissed pursuant to an administrative rule where the claimant refused to answer interrogatories for more than a year; former § 13-1-201 did not expressly or by implication prevent the Workmen's Compensation Commission from adopting the statutory discovery procedures as a part of its rules of procedure. Further, written interrogatories were a part of the available discovery procedures in force and effect when the administrative rule at issue was enacted and at all other pertinent times. Flemon v. State Poultry Co., 373 So. 2d 273 (Miss. 1979).

In view of commission rule, adopted pursuant to this section [Code 1942, § 6998-43], apportionment on account of a pre-existing injury cannot be made without basis in pleading and proof. Mississippi Federated Coops. v. Roberts, 248 Miss. 732, 160 So. 2d 922 (1964).

Dismissal of a claim pursuant to a rule adopted under this section [Code 1942, § 6998-43], for failure of claimant to appear at a hearing, held proper. Barq's Bottling Co. v. Broussard, 239 Miss. 561, 124 So. 2d 294 (1960).

The workmen's compensation board had the power under the workmen's compensation statute to promulgate the rule that any insurance carrier having issued a policy to an employer and desiring to cancel or terminate same shall be required to give three days prior notice thereof in writing to the commission and to the employer. T.H. Mastin & Co. v. Russell, 214 Miss. 700, 59 So. 2d 321 (1952).

3. Failure to act.

Where the workmen's compensation commission failed to make a decision on the facts of a case as required by this section [Code 1942, § 6998-43], the cause must be remanded to the commission for a proper order. Bruton v. Mississippi Workmen's Comp. Comm'n, 253 Miss. 694, 178 So. 2d 673 (1965).

When one commissioner recuses himself or fails to act, it is impossible for the workmen's compensation commission to be the determiner of facts where the two remaining commissioners cannot agree upon the facts, and on the decision and order of the attorney referee based thereon. Bruton v. Mississippi Workmen's Comp. Comm'n, 253 Miss. 694, 178 So. 2d 673 (1965).

RESEARCH REFERENCES

Am Jur. 82 Am. Jur. 2d, Workers' Compensation §§ 63 et seq.

CJS. 100 C.J.S., Workmen's Compensation §§ 700, 702, 716 et seq.

§ 71-3-87. Official bond.

Members of the commission shall give bond in the sum of Ten Thousand Dollars ($10,000.00) of a surety company authorized to do business in the state, for the faithful performance of their duties. The premium upon such bonds shall be paid out of the workmen's compensation administration fund.

SOURCES: Codes, 1942, § 6998-44; Laws, 1948, ch. 354, § 38; reenacted without change, Laws, 1982, ch. 473, § 44; reenacted without change, Laws, 1990, ch. 405, § 46, eff from and after July 1, 1990.

Editor's Note — Chapter 408 of Laws of 1984 (§ 71-3-1) changed the title of the Workmen's Compensation Law to "Workers' Compensation Law" and provided that the words "workmen's compensation" shall mean "workers' compensation" and "commission" shall mean "workers' compensation commission."

§ 71-3-89. Seal.

The commission shall have a seal for authentication of its orders, awards, and proceedings, upon which shall be inscribed the words "workmen's compensation commission-Mississippi-seal," and it shall be judicially noticed.

SOURCES: Codes, 1942, § 6998-45; Laws, 1948, ch. 354, § 39; reenacted without change, Laws, 1982, ch. 473, § 45; reenacted without change, Laws, 1990, ch. 405, § 47, eff from and after July 1, 1990.

Editor's Note — Chapter 408 of Laws of 1984 (§ 71-3-1) changed the title of the Workmen's Compensation Law to "Workers' Compensation Law" and provided that the words "workmen's compensation" shall mean "workers' compensation" and "commission" shall mean "workers' compensation commission."

§ 71-3-91. Traveling expenses.

Commissioners and employees of the commission shall receive their necessary traveling expenses and costs of subsistence while traveling on official business and away from their designated station. Expense accounts shall be sworn to by the person presenting them and, upon approval by the chairman of the commission, shall be allowed and paid as provided in Section 71-3-97.

SOURCES: Codes, 1942, § 6998-46; Laws, 1948, ch. 354, § 40; Laws, 1950, ch. 412, § 16; reenacted without change, Laws, 1982, ch. 473, § 46; reenacted without change, Laws, 1990, ch. 405, § 48, eff from and after July 1, 1990.

§ 71-3-93. Administrative staff.

The commission shall appoint such officers and employees as are necessary adequately to administer the Workers' Compensation Law, including not more than eight (8) administrative judges to be appointed by the commission with the consent of the Governor and an executive director who shall serve at the will of the commission and shall have such administrative duties as are assigned by the commission, a secretary, a statistician, a rehabilitation unit, and any other employees deemed essential to the administration of the law including court reporters whose salaries shall be the same as set for court reporters for circuit and chancery courts by Section 9-13-19. The annual salary of the executive director shall be equal to that of an administrative judge. An administrative judge shall be a member of the Mississippi State Bar and shall have a minimum of three (3) years' experience in the practice of law.

All salaries not specifically fixed by law shall be set by the commission. The establishing of a merit system or career service for employees of the commission is declared to be in the public interest because of the length of time required for understanding the details and problems involved in administering this legislation. The commission shall establish and enforce fair and reasonable rules for the appointment, promotion and demotion of personnel. All employees of the commission with the exception of medical consultants shall devote their entire time to the duties of their office.

For the purpose of conducting hearings and making decisions upon claims, the administrative judge or administrative judges appointed by the commission shall have the authority of a commissioner.

SOURCES: Codes, 1942, § 6998-47; Laws, 1948, ch. 354, § 41; Laws, 1950, ch. 412, § 17; Laws, 1956, ch. 345, § 3; Laws, 1962, ch. 474, § 2; Laws, 1966, ch. 455, § 1; Laws, 1974, ch. 384; Laws, 1977, ch. 381; Laws, 1978, ch. 428, § 1; Laws, 1980, ch. 475, § 3; reenacted, Laws, 1982, ch. 473, § 47; reenacted without change, Laws, 1990, ch. 405, § 49; Laws, 1993, ch. 552, § 3, eff from and after passage (approved April 13, 1993).

Cross References — Salaries of Workers' compensation Commission, see § 25-3-3.

JUDICIAL DECISIONS

1. In general.

No procedural invalidity existed where a commissioner wrote the factual summary for the administrative law judge as the judge wrote the fact-findings and legal conclusions, and the commissioner who wrote the summary recused herself from the appeal. Kitchens v. Jerry Vowell Logging, 874 So. 2d 456 (Miss. Ct. App. 2004).

An administrative law judge, as affirmed by the Workers' Compensation Commission and the circuit court, erred as a matter of law when he specifically stated that a hearing on an injured employee's motion to consider the need for additional medical treatment at the employer's expense under General Rule 9 was limited to whether the employee was suffering from improper medical treatment or lack of medical treatment, and then proceeded to make findings on maximum medical recovery and apportionment; an administrative law judge may not announce a limited purpose of a hearing, require the litigants to argue under limitation, and then decide the whole of the case including the time of maximum recovery apportionment and compensation. Monroe v. Broadwater Beach Hotel, 593 So. 2d 26 (Miss. 1992).

ATTORNEY GENERAL OPINIONS

As to which legislation, Miss. Code Section 71-3-93 or Senate Bill No. 2114 amending Miss. Code Section 25-3-33 [Repealed], will govern and determine annual salary to be paid to Executive Director of Commission, it is well settled that amendment which is in conflict with previous legislation supersedes any inconsistent provisions of previous legislation; that is, in situation such as this, when legislation is enacted on same subject matter and there is conflict, law approved last in time prevails, which in this case is Senate Bill No. 2114 which amends Miss. Code Section 25-3-33 [Repealed]. Porter, June 17, 1993, A.G. Op. #93-0395.

Sections 71-3-55(2) and 71-3-93 leave to the discretion of the Commission the selection of both the method used to create adequate records of its hearings and other proceedings and the determination of which employees are necessary and essential to administering the work of the Commission. Porter, November 22, 1996, A.G. Op. #96-0766.

Language in appropriation bills, which appropriate money to the Workers' Compensation Commission for salaries, wages, and benefits and directs that they be expended "in compliance with the policies established by the State Personnel Board and conditions placed on such expenditures," reflects legislative intent that the Workers' Compensation Commission abide by the personnel rules and regulations of the State Personnel Board rather than its own rules. Minor, April 7, 2000, A.G. Op. #2000-0177.

The State Personnel Board statutes, Sections 25-9-101 et seq., supersede the conflicting provisions of Section 71-3-93, and the Workers' Compensation Commission may not establish and enforce its own rules and procedures that would conflict with State Personnel Board regulations for hiring, firing, appointment, promotion, demotion, and payment of personnel. Minor, April 7, 2000, A.G. Op. #2000-0177.

RESEARCH REFERENCES

CJS. 100 C.J.S., Workers' Compensation § 708, 709.

§ 71-3-95. Payment of operating expense.

(1) The commission shall make such expenditures as may be necessary for the adequate administration of this chapter, including salaries and traveling expense, the cost of personal services, office rent at the seat of government and elsewhere, the purchase of books, periodicals, office equipment and supplies, printing and binding reports, the cost of membership in official organizations, and other purposes. All expenditures of the commission in the administration of this chapter shall be allowed and paid out of the Administration Expense Fund as provided in Section 71-3-97, upon the presentation of itemized vouchers therefor approved by the chairman of the commission.

(2) The commission is authorized, in its discretion, to transfer a sum or sums not to exceed Two Hundred Thousand Dollars ($200,000.00) from the Administration Expense Fund to the Second Injury Fund. The commission is further authorized, in its discretion, to replace any funds so transferred in the event that funds become available.

SOURCES: Codes, 1942, § 6998-48; Laws, 1948, ch. 354, § 42; Laws, 1950, ch. 412, § 18; reenacted without change, Laws, 1982, ch. 473, § 48; Laws, 1984, ch. 497, § 2; Laws, 1987, ch. 361, § 7; reenacted without change, Laws, 1990, ch. 405, § 50, eff from and after July 1, 1990.

§ 71-3-97. Administration expense fund.

(1) There is hereby established in the state treasury a special fund for the purpose of providing for the payment of all expenses in respect to the administration of this chapter. Such fund shall be administered by the commission. The state treasurer shall be the custodian of such funds, and all monies and securities in such fund shall be held in trust by such treasurer and shall not be the money or property of the state.

(2) The state treasurer is authorized to disburse monies from such fund only upon order of the commission. The official bond of the state treasurer shall be conditioned for the faithful performance of his duty hereunder.

(3) The state treasurer shall deposit any monies paid into such fund into such qualified depository banks as the commission may designate, and is authorized to invest any portion of the fund which, in the opinion of the commission, is not needed for current requirements, in the same manner and subject to all the provisions of the law with respect to the deposit of state funds by such treasurer. All interest earned by such portion of the fund as may be invested by the state treasurer shall be collected by him and placed to the credit of such fund.

(4) All civil penalties provided in this chapter, if not voluntarily paid, may be collected by civil suit brought by the commission, and shall be paid into such fund.

SOURCES: Codes, 1942, § 6998-49; Laws, 1948, ch. 354, § 43; reenacted without change, Laws, 1982, ch. 473, § 49; reenacted without change, Laws, 1990, ch. 405, § 51, eff from and after July 1, 1990.

Cross References — Civil penalty for pursuit of frivolous claim to be deposited into Administrative Expense Fund, see § 71-3-59.

Civil penalty for failure to secure payment of workers' compensation benefits to be deposited into Administrative Expense Fund, see § 71-3-83.

Transfer of funds to the second injury fund, see § 71-3-95.

Applicability of this section to per diem and mileage payments to members of the Medical Advisory Board of the Workers' Compensation Commission, see § 71-3-115.

Applicability of this section to cover the expenses of a study of alternative systems of workers' compensation, see § 71-3-117.

§ 71-3-99. Budget and collection procedure.

(1) The commission shall estimate annually in advance the amounts necessary for the administration of this chapter, in the following manner:

(a) The commission shall, as soon as practicable after the first day of January in each year, determine the expense of administration of this chapter for the one-year period preceding the first day of January. The expense of administration for such period shall be used as the basis for determining the amount to be assessed against each carrier and self-insurer in order to provide for the expenses of the administration of this chapter for the one-year period.

(b) Each carrier and self-insurer shall be assessed Two Hundred Fifty Dollars ($250.00). The proceeds of such assessment shall be deducted from the estimate of total expenses and the remaining expenses of administration shall be prorated among the carriers writing compensation insurance in the state and self-insurers. The gross claims for compensation and medical services and supplies paid by the insurance carriers and self-insurers is the basis for computing the amount to be assessed, in the proportion that the total gross claims for compensation and medical services and supplies paid by such carrier or self-insurer during the preceding one-year period bore to the total gross claims for compensation and medical supplies and services paid by all carriers and self-insurers during such period. This amount may be assessed as a specific amount or as a percentage of gross claims for compensation and medical supplies and services paid by the insurance carriers and self-insurers as the commission may direct, and shall be such amount as shall be reasonably necessary to defray the necessary expense of such administration.

(2) The commission shall provide by regulation for the collection of the amounts assessed against each carrier and self-insurer. Such amounts shall be paid within thirty (30) days from the date that notice is served upon such carrier. If such amounts are not paid within such period, there may be assessed, for each thirty (30) days the amount so assessed remains unpaid, a civil penalty equal to ten percent (10%) of the amount so unpaid, which shall be collected at the same time and as a part of the amount assessed.

(3) If any carrier or self-insurer fails to pay the amounts assessed against it under the provisions of this section within sixty (60) days from the time such notice is served, the commission may suspend or revoke the authorization to insure compensation or to be self-insured.

(4) All amounts collected under the provisions of this section shall be paid into the Administration Expense Fund.

(5) The commission may require from each carrier and self-insurer, at such time and in accordance with regulations as the commission may prescribe, reports in respect to all payments of compensation and medical supplies and services by such carriers or self-insurers during each prior period, and may determine the amounts paid by each carrier and self-insurer and the amounts paid by all carriers and self-insurers during such period.

(6) Every carrier and self-insurer shall file with the commission on or before the first day of March of each year, a statement on the prescribed forms showing the gross claims for compensation and medical services and supplies paid by such carrier or self-insurer during the preceding one-year period ending on the thirty-first day of December. Any carrier or self-insurer which neglects to make and file its annual written statement within the time provided in this chapter shall pay to the commission Twenty Dollars ($20.00) for each day's neglect.

SOURCES: Codes, 1942, § 6998-50; Laws, 1948, ch. 354, § 44; Laws, 1950, ch. 412, § 19; Laws, 1978, ch. 320, § 1; reenacted, Laws, 1982, ch. 473, § 50; Laws, 1987, ch. 361, § 8; reenacted without change, Laws, 1990, ch. 405, § 52, eff from and after July 1, 1990.

Cross References — Funding Insurance Integrity Enforcement Bureau, see § 7-5-305.

Administrative Expense Fund, see § 71-3-97.

Application of this section to the collection of an assessment against members of the workers' compensation self-insurer guaranty association, see § 71-3-163.

RESEARCH REFERENCES

Am Jur. 82 Am. Jur. 2d, Workers' Compensation §§ 615 et seq.

CJS. 100 C.J.S., Workers' Compensation §§ 646, 647 et seq.

§ 71-3-100. Payment and deposit in state treasury of funds received by commission.

All funds received by the workmen's compensation commission, as established by Section 71-3-85 et seq., shall be paid to the state treasurer, who shall issue receipts therefor and who shall deposit such funds in the state treasury in a special fund to the credit of said commission. All such funds shall be expended only pursuant to appropriation approved by the legislature and as provided by law.

SOURCES: Laws, 1973, ch. 381, § 4; reenacted, Laws, 1982, ch. 473, § 51; Laws, 1984, ch. 488, § 272; reenacted without change, Laws, 1990, ch. 405, § 53, eff from and after July 1, 1990.

Editor's Note — Chapter 408 of Laws of 1984 (§ 71-3-1) changed the title of the Workmen's Compensation Law to "Workers' Compensation Law" and provided that the words "workmen's compensation" shall mean "workers' compensation" and "commission" shall mean "workers' compensation commission."

§ 71-3-101. Registration of insurance companies.

Each insurance company and all other carriers which desire to write workmen's compensation insurance in compliance with this chapter shall be required, before writing such insurance, to register with the workmen's compensation commission and pay a registration fee of One Hundred Dollars ($100.00). This shall be deposited by the commission in the administration expense fund.

SOURCES: Codes, 1942, § 6998-51; Laws, 1948, ch. 354, § 45; reenacted without change, Laws, 1982, ch. 473, § 52; reenacted without change, Laws, 1990, ch. 405, § 54, eff from and after July 1, 1990.

Editor's Note — Chapter 408 of Laws of 1984 (§ 71-3-1) changed the title of the Workmen's Compensation Law to "Workers' Compensation Law" and provided that the words "workmen's compensation" shall mean "workers' compensation" and "commission" shall mean "workers' compensation commission."

Cross References — Exemption of national guard from payment of registration fee, see § 33-1-29.

Administrative Expense fund, see § 71-3-97.

RESEARCH REFERENCES

Am Jur. 82 Am. Jur. 2d, Workers' Compensation § 616.

CJS. 100 C.J.S., Workers' Compensation §§ 646, 647.

§ 71-3-103. Annual report.

The commission shall each calendar year make a report to the governor upon the operation of this chapter, including suggestions and recommendations as to improvements in the law and administration, a detailed statement of receipts and disbursements, and an exposition of industrial injury experience and compensation and medical cost.

SOURCES: Codes, 1942, § 6998-52; Laws, 1948, ch. 354, § 46; Laws, 1950, ch. 412, § 20; reenacted without change, Laws, 1982, ch. 473, § 53; reenacted without change, Laws, 1990, ch. 405, § 55, eff from and after July 1, 1990.

RESEARCH REFERENCES

Am Jur. 82 Am. Jur. 2d, Workers' Compensation § 64.

CJS. 100 C.J.S., Workers' Compensation §§ 701, 706-714, 717.

§ 71-3-105. Rehabilitation.

The commission shall cooperate with federal, state, and local agencies in the rehabilitation of handicapped workers, and shall promptly report to the proper authority industrial injury cases in which retraining or job placement may be needed.

SOURCES: Codes, 1942, § 6998-53; Laws, 1948, ch. 354, § 47; reenacted without change, Laws, 1982, ch. 473, § 54; reenacted without change, Laws, 1990, ch. 405, § 56, eff from and after July 1, 1990.

Cross References — Duty of state board to co-operate with federal government in vocational rehabilitation programs, see § 37-33-21.

Maintenance for employees undergoing vocational rehabilitation, see § 71-3-19.

RESEARCH REFERENCES

CJS. 99 C.J.S., Workers' Compensation §§ 545-549, 551-555, 582, 561, 592.

§ 71-3-107. Compensation and death benefits for minors illegally employed.

Compensation and death benefits shall be double the amount otherwise payable if the injured employee at the time of the injury is a minor under eighteen (18) years of age employed, permitted, or suffered to work in violation of any provision of the Mississippi labor laws. The employer alone and not the insurance carrier shall be liable for such increased compensation or increased death benefits. Any provision in an insurance policy undertaking to relieve an employer from such increased liability shall be void. The provisions of this section shall not apply, and double compensation and double death benefits shall not be payable, for death or injury to an employee under eighteen (18) years of age employed in the following programs:

(a) Students fourteen (14) years of age and over and regularly enrolled in an accredited secondary school or college and employed between regular terms or semesters with the written consent of their parent or parents or person standing in loco parentis.

(b) Students fourteen (14) years of age and over and employed in on-the-job training as a part of a regular program of education in an accredited secondary school with the written consent of their parent or parents or person standing in loco parentis.

SOURCES: Codes, 1942, § 6998-54; Laws, 1948, ch. 354, § 48; 1950, ch. 412, § 21; 1968, ch. 560, § 1; reenacted without change, Laws, 1982, ch. 473, § 55; reenacted without change, Laws, 1990, ch. 405, § 57, eff from and after July 1, 1990.

Cross References — Regulation of child labor, see §§ 71-1-17 through 71-1-21.

JUDICIAL DECISIONS

1. In general.
2. Illustrative cases.

1. In general.

In a claim for double workmen's compensation benefits arising out of the death of a 16-year old boy who was employed by a corporation which cultivated the soil to produce grain which it used to feed cattle which it later sold, the corporation was not a manufacturing establishment within the meaning of § 71-1-17 where the harvested grain was not converted from a raw product into a substantially different substance or material; since the decedent's work activity of entering a grain silo to level shelled corn was incidental to the corporation's farming activities, the decedent's employment was agricultural in nature and the doubt compensation benefits provided by § 71-3-107 were not recoverable. Dependents of Stafford v. United States Cattle Corp., 389 So. 2d 923 (Miss. 1980).

2. Illustrative cases.

A 17-year-old boy employed in a cotton gin, whose hours of labor violated the provisions of Code 1942, § 6986, was entitled to double compensation benefits for injuries he sustained in the scope and course of his employment. Lopanic v. Berkeley Coop. Gin Co., 191 So. 2d 108 (Miss. 1966).

RESEARCH REFERENCES

ALR. Insurance carrier's liability for part of employer's liability attributable to violation of law or other misconduct on his part. 1 A.L.R.2d 407.

Am Jur. 82 Am. Jur. 2d, Workers' Compensation § 591.

CJS. 99 C.J.S., Workers' Compensation §§ 598, 601.

§ 71-3-109. Extraterritorial application.

(1) If an employee who has been hired or is regularly employed in this state receives personal injury by accident arising out of and in the course of his employment while temporarily employed outside of this state, he or his dependents in case of his death shall be entitled to compensation according to the law of this state. This provision shall apply only to those injuries received by the employee within six (6) months after leaving this state unless, prior to the expiration of such six (6) months' period, the employer has filed with the commission of Mississippi notice that he has elected to extend such coverage a greater period of time.

(2) The provisions of this section shall not apply to an employee whose departure from this state is caused by a permanent assignment or transfer.

(3) Any employee who has been hired or is regularly employed outside of this state and his employer shall be exempted from the provisions of this chapter while such employee is temporarily within this state doing work for his employer if such employer has furnished workmen's compensation insurance coverage under the workmen's compensation or similar laws for a state other than this state so as to cover such employee's employment while in this state, provided the extra-territorial provisions of this chapter are recognized in such other state and provided employers and employees who are covered in this state are likewise exempted from the application of the workmen's compensation or similar laws of such other state. The benefits under the workmen's compensation or similar laws of such other state shall be the exclusive remedy against such employer for any injury, whether resulting in death or not, received by such employee while working for such employer in this state.

SOURCES: Codes, 1942, § 6998-55; Laws, 1948, ch. 354, § 49; reenacted without change, Laws, 1982, ch. 473, § 56; reenacted without change, Laws, 1990, ch. 405, § 58, eff from and after July 1, 1990.

Editor's Note — Chapter 408 of Laws of 1984 (§ 71-3-1) changed the title of the Workmen's Compensation Law to "Workers' Compensation Law" and provided that the words "workmen's compensation" shall mean "workers' compensation" and "commission" shall mean "workers' compensation commission."

JUDICIAL DECISIONS

1. In general.
2. Mississippi injury of nonresident employee.
3. Out-of-state injury of Mississippi employee.
4. Injury of employee permanently assigned or transferred out of Mississippi.
5. No relation of employment to Mississippi.

1. In general.

An employee who was not hired in Mississippi, did no work in that state, nor was injured therein cannot claim the benefits of the Mississippi Workmen's Compensation Law, for either hiring or regular employment in the state is essential to recovery under this section [Code 1942, § 6998-55]. L. & A. Constr. Co. v. McCharen, 198 So. 2d 240 (Miss. 1967), cert. denied, 389

U.S. 945, 88 S. Ct. 310, 19 L. Ed. 2d 301 (1967).

It is not essential that the accident occurs in Mississippi in order to allow the Mississippi Workmen's Compensation Law to operate. Burnham Van Serv., Inc. v. Dependents of Moore, 250 Miss. 165, 164 So. 2d 733 (1964).

The Mississippi Workmen's Compensation Law was adopted in the exercise of the state's police power to provide for the welfare of its citizens and others performing labor within its borders, and the subject matter is one upon which the state is competent to legislate. Mandle v. Kelly, 229 Miss. 327, 92 So. 2d 246 (1957).

The full faith and credit clause does not go so far as to require a state to withhold the application of its workmen's compensation laws because they conflict with the workmen's compensation laws of another state. Mandle v. Kelly, 229 Miss. 327, 92 So. 2d 246 (1957).

2. Mississippi injury of nonresident employee.

Since the exemption in subsection (c) of this section [Code 1942, § 6998-55] was not applicable where an employee, employed in Georgia, sustained a disability while operating his employer's truck upon Mississippi highways and had received extensive medical treatment within the state for which payment had not been received, the Mississippi Workmen's Compensation Law applied, notwithstanding the Georgia employer's contention that the application of the Law would violate the full faith and credit clause of the United States Constitution, would constitute an interference with, or impairment of, the right to contract, and would interfere with interstate commerce. Mandle v. Kelly, 229 Miss. 327, 92 So. 2d 246 (1957).

The exemption provided in subsection (c) of this section [Code 1942, § 6998-55] was inapplicable where an employee, employed in Georgia, was injured while temporarily in Mississippi doing work for his employer, and the Georgia Workmen's Compensation Act was silent as to the extra-territorial provisions of the workmen's compensation of other states, and there was no provision for exempting from its application employees and employers when the employee had been hired and was regularly employed outside of Georgia, and such employee was injured while temporarily within Georgia doing work for his employer. Mandle v. Kelly, 229 Miss. 327, 92 So. 2d 246 (1957).

Where, under the law of Georgia where its contract was made, the workmen's compensation carrier was not obligated to pay to any person any benefit under any compensation law except the Georgia act, the liability of the carrier could not be extended by application of the Mississippi Workmen's Compensation Law contrary to the express terms of the policy, since to do so would violate the due process clause of the United States Constitution. Mandle v. Kelly, 229 Miss. 327, 92 So. 2d 246 (1957).

Where an employee who was hired in Louisiana sustained injuries in Mississippi, compensation was properly awarded under the Workmen's Compensation Law despite the fact that Louisiana's workmen's compensation law was given an extra-territorial effect by the courts of that state and it was purported to be an exclusive remedy, where it was not shown that employee would have an available remedy for his injury. LaDew v. LaBorde, 216 Miss. 598, 63 So. 2d 56 (1953), corrected, 216 Miss. 606, 63 So. 2d 825 (1953).

Where the Workmen's Compensation Law provides that employee regularly employed outside of the state, receiving injury when in state temporarily, shall be exempt if covered under the law of the state of hiring and is covered by that state under extra-territorial provisions, this provision did not exempt an employee hired in Louisiana where it was not shown that the compensation act would be given extra-territorial recognition by Louisiana. LaDew v. LaBorde, 216 Miss. 598, 63 So. 2d 56 (1953), corrected, 216 Miss. 606, 63 So. 2d 825 (1953).

3. Out-of-state injury of Mississippi employee.

Notwithstanding that the employment contract was accepted by the employer in another state and that the fatal injury was sustained by the employee while out of the state, the Mississippi Workmen's Compensation Law applied where it was shown that the employee truck driver was a Mississippi resident, the employment contract was initiated in Mississippi, and that the employee's base of operations was in Gulfport, Mississippi. Burnham Van Serv., Inc. v. Dependents of Moore, 250 Miss. 165, 164 So. 2d 733 (1964).

An employee hired and regularly employed in Mississippi is entitled to compensation under the Mississippi Workmen's Compensation Law for injuries received while temporarily working in another state for his Mississippi employer. Martin v. L. & A. Contracting Co., 249 Miss. 441, 162 So. 2d 870 (1964).

An employer and his insurer are estopped to deny coverage of an employee temporarily working out of the state for more than six months, where the employer agreed to continue coverage but failed to give the commission notice of extension, and reinsurance obtained by the insurer was in effect at the employee's death. Dawson's Dependents v. Delta W. Exploration Co., 245 Miss. 335, 147 So. 2d 485 (1962).

A claimant, a Louisiana resident employed in Mississippi by a contracting company engaged in laying pipe lines from Louisiana through Mississippi to a point in Tennessee, who, after the completion of his work in Mississippi, was transferred to Tennessee where he was injured on the last day of his Tennessee employment of less than two months, was entitled to compensation under the Mississippi Workmen's Compensation Law since the Tennessee assignment was only temporary. Houston Contracting Co. v. Reed, 231 Miss. 213, 95 So. 2d 231 (1957).

A Mississippi resident, employed in Mississippi by an out of state employer performing Mississippi River construction work both in Mississippi and Louisiana, who, following the completion of the Mississippi phase of the work, was transferred to Louisiana where his employment was to continue only until the construction work was there completed, and who, some 23 days after his transferral, sustained injuries in Louisiana in an accident arising out of and in the course of his employment, was entitled to benefits of the Mississippi Workmen's Compensation Law, notwithstanding a stipulation that the employer might have obtained future out of the state contracts where claimant's service might have been used had he not been injured. Winborn v. R.B. Tyler Co., 231 Miss. 166, 94 So. 2d 340 (1957).

4. Injury of employee permanently assigned or transferred out of Mississippi.

In considering the application of subsection (b) of this section [Code 1942, § 6998-55], the question is not whether the departure from Mississippi was temporary or permanent but whether the assignment or transfer elsewhere was temporary or permanent, i. e., the determinative fact is whether the assignment or transfer elsewhere was permanent, not whether claimant had any reasonable expectation of returning to Mississippi in his employment with the employer. Winborn v. R.B. Tyler Co., 231 Miss. 166, 94 So. 2d 340 (1957).

5. No relation of employment to Mississippi.

Dismissal of the employee's workers' compensation claim in Indiana for lack of jurisdiction under Miss. Code Ann. § 71-3-109(1) was proper where all work performed under the contract was performed in Indiana and the injury occurred in Pennsylvania; none of the contractual documents relating to the employee's employment originated in Mississippi or had any relation to the state, nor did it appear that there was any likelihood that Mississippi would have become the focus of any of the employee's duties for the employer. Rice v. Burlington Motor Carriers, 839 So. 2d 602 (Miss. Ct. App. 2003).

RESEARCH REFERENCES

ALR. Workmen's compensation act: voluntary payment of compensation under statute of one state as bar to claim or ground for reduction of claim of compensation under statute of another state. 8 A.L.R.2d 628.

Am Jur. 82 Am. Jur. 2d, Workers' Compensation §§ 70 et seq.

CJS. 99 C.J.S., Workmen's Compensation §§ 62-67 et seq.

§ 71-3-111. Mississippi Workers' Compensation Assigned Risk Plan; commissioner's duties and responsibilities; temporary joint underwriting association.

(1) The Department of Insurance is directed to promulgate such rules and regulations as will enable the department to provide the "Mississippi Workers' Compensation Assigned Risk Plan" for the assignment of risks which in good faith are entitled to insurance under this chapter but which, because of unusual conditions and circumstances, are unable to obtain such insurance.

(2) The Commissioner of Insurance is designated as the Director of the Mississippi Workers' Compensation Assigned Risk Plan, and he shall design the assigned risk plan in such a manner that the plan should become self-supporting with no outside assessments. The commissioner may contract for a safety program.

(3) The Commissioner of Insurance is authorized to advertise and contract with any workers' compensation insurance carriers that are licensed and writing workers' compensation insurance within the State of Mississippi or providers of workers' compensation claims and loss control services within the State of Mississippi to be servicing carriers. A servicing carrier shall provide all insurance services to employers insured under the plan as are otherwise rendered to those covered by policies voluntarily written by companies licensed to write workers' compensation insurance in the state.

(4) The Commissioner of Insurance may establish the "Mississippi Workers' Compensation Assigned Risk Pool" as a reinsurance mechanism for the "Mississippi Workers' Compensation Assigned Risk Plan" to accomplish the equitable distribution of all underwriting profit or loss of the plan to the companies licensed to write workers' compensation insurance in the state in direct proportion to their share of the total voluntary workers' compensation premiums written in the state. If established, all insurance companies licensed to write workers' compensation insurance under this chapter shall be members of and participants in this pool.

(5) The Commissioner of Insurance shall be responsible for the administration of both the "Mississippi Workers' Compensation Assigned Risk Plan" and the "Mississippi Workers' Compensation Assigned Risk Pool" but may designate an administrator of either or both, at his discretion. The Commissioner of Insurance may levy special assessments against the Mississippi Workers' Compensation Assigned Risk Pool, if necessary, to provide funding for administrative expenses.

(6) The commissioner is hereby authorized to establish a temporary joint underwriting association that shall consist of all insurers authorized to write, or engaged in writing, within this state on any basis, workers' compensation insurance as reported in the companies' annual statements.

The purpose of the association shall be to provide a market for workers' compensation insurance on a self-supporting basis.

The association shall not be established nor begin underwriting operations until the commissioner, after due hearing and investigation, has determined that workers' compensation insurance is not readily available. A determination that such insurance is not readily available shall be necessary before the association begins operations.

Upon such determination, the association shall be authorized to issue policies of workers' compensation insurance.

If the commissioner determines at any time that workers' compensation insurance can be made readily available in the voluntary market, the association shall then cease its underwriting operations for such workers' compensation insurance that has been determined to be available in the voluntary market.

The Commissioner of Insurance is authorized to promulgate rules and regulations to effectuate the purposes of this section, to include levying assessments, if necessary, to provide funding for start-up and administrative expenses.

SOURCES: Codes, 1942, § 6998-56; Laws, 1948, ch. 354, § 50; reenacted without change, Laws, 1982, ch. 473, § 57; reenacted without change, Laws, 1990, ch. 405, § 59; Laws, 1992, ch. 577, § 6, eff from and after passage (approved May 15, 1992).

JUDICIAL DECISIONS

1. In general.

Where an insured had formed a partnership upon the advice of the insurer's agent in order to obtain assigned risk workmen's compensation insurance, and he had informed the agent of a prior heart attack as his reason for requiring risk insurance, and the policy issued named the insured as an active partner and imposed an 8 percent surcharge on account of the risk, the failure of the insurer through its agent, to notify the insured that it would not write the assigned risk policy, instead issuing a policy purporting to comply with the explicit requirements of the application, changing the position of the insured to his detriment, and where the insurer continued to accept premiums and surcharges, the insurer was estopped from pleading that the insured was ineligible to recover benefits when he suffered a heart attack 5 years after the policy was issued, notwithstanding the absence of a partnership indorsement on the policy. Carter v. Carter, 246 So. 2d 520 (Miss. 1971).

When accident happened to an employee, the employer had no compensation insurance and did not apply to the commission for a policy under the assigned risk plan, the employee had a right to bring a common-law action for damages in view of the fact that the employer failed to comply with the Workmen's Compensation Law. McCoy v. Cornish, 220 Miss. 577, 71 So. 2d 304 (1954).

RESEARCH REFERENCES

Am Jur. 82 Am. Jur. 2d, Workers' Compensation § 68.

CJS. 100 C.J.S., Workers' Compensation §§ 718, 719.

§ 71-3-113. Repealed.

Repealed by Laws, 1990, ch 405, § 60, eff from and after July 1, 1990. [Laws, 1979, ch. 301, § 48; Laws, 1982, ch. 473, § 58]

Editor's Note — Former § 71-3-113 provided for the repeal of §§ 71-3-1 through 71-3-111.

§ 71-3-115. Medical Advisory Board; appointment; qualifications; expenses; recommendations.

(1) The Mississippi Workers' Compensation Commission shall appoint a medical advisory board to serve in an advisory capacity to study the possibility of the use of a medical fee schedule and to provide assistance to the commission in the performance of its functions relating to regulation of medical fees and charges pursuant to Section 71-3-15(3), Mississippi Code of 1972.

(2) Such board shall consist of five (5) members, one (1) appointed from each congressional district as they existed on January 1, 1985. Members of the board shall serve at the will and pleasure of the commission. All members of the medical advisory board shall be health care providers.

(3) Such board shall meet upon the call of the chairman of the Mississippi Workers' Compensation Commission. The board shall receive per diem and mileage as authorized by Section 25-3-69, Mississippi Code of 1972, for attendance at called meetings to be paid from the administrative expense fund as provided in Section 71-3-97, Mississippi Code of 1972.

(4) The Mississippi Workers' Compensation Commission shall provide all office space and clerical assistance that might be required by the board.

(5) The Workers' Compensation Commission shall file a report with the Secretary of the Senate and the Clerk of the House of Representatives not later than December 15, 1987, concerning the result of the medical fee schedule study, together with any recommendations that the commission may consider necessary in regard to the regulation of medical fees and other costs. Such report shall contain any available comparative data generated by the commission or the medical advisory board.

SOURCES: Laws, 1987, ch. 361, § 1, eff from and after passage (approved March 19, 1987).

§ 71-3-117. Review and evaluation of alternative systems of workers' compensation; expenses; recommendations.

(1) The Mississippi Workers' Compensation Commission is hereby authorized and directed to review and make recommendations to the Legislature concerning alternative systems of workers' compensation for the State of Mississippi. The commission shall evaluate (a) the feasibility of group self-insurance and a self-insurance guarantee fund; (b) the deregulation of compensation insurance rates, including the impact of reserving practices, return on investments and profitability on workers' compensation ratemaking; (c)

structural alternatives, such as the utilization of a state fund to operate the compensation system; and (d) the provisions of vocational rehabilitation services for covered employees. The Mississippi Department of Insurance shall cooperate and assist the Workers' Compensation Commission in preparing its recommendations.

(2) The Mississippi Workers' Compensation Commission may employ an actuary and such other staff as may be required to properly conduct this study. The expense of this study shall be paid from the administrative expense fund as provided in Section 71-3-97, Mississippi Code of 1972.

(3) The Mississippi Workers' Compensation Commission shall file its report with the Clerk of the House of Representatives and the Secretary of the Senate, together with recommendations for legislation, no later than December 15, 1987, with respect to the subject matter set forth in paragraphs (1)(a) and (1)(d) and no later than November 1, 1988, with respect to the subject matter set forth in paragraphs (1)(b) and (1)(c).

SOURCES: Laws, 1987, ch. 361, § 2, eff from and after passage (approved March 19, 1987).

§ 71-3-119. Workers' Compensation Advisory Council; qualifications; appointment; compensation; expenses; purpose; reports.

(1) There is hereby created the Mississippi Workers' Compensation Advisory Council composed of individuals who, by their practice, experience and expertise, reflect the general composition of those involved with the workers' compensation field. The council shall consist of not more than twenty-five (25) members excluding the members of the Mississippi Workers' Compensation Commission, who shall be ex officio members. The members of such council shall be appointed by the Mississippi Workers' Compensation Commission within thirty (30) days of March 19, 1987, to a one-year term or until their successors are appointed and qualified. The members of the council shall select one of their number to be chairman. The advisory council shall consider and advise the Mississippi Workers' Compensation Commission on all matters related to the administration of the Mississippi Workers' Compensation Law. In its discretion the council may recommend to the Mississippi Workers' Compensation Commission changes it deems needed in the substance and administration of the Mississippi Workers' Compensation Law. The council shall report periodically to the Mississippi Workers' Compensation Commission regarding the performance of its duties and functions.

(2) The members of the advisory council shall receive the per diem under Section 25-3-69 for attendance of meetings of the council and shall be reimbursed for actual and necessary mileage and travel expenses incurred in the discharge of their duties pursuant to Section 25-3-41. The Mississippi Workers' Compensation Commission may provide personnel to aid the council in the performance of its functions. The amounts allowed to the members of the council for per diem compensation, travel and other council expenses is an

expense incurred in the administration of the Mississippi Workers' Compensation Law.

SOURCES: Laws, 1987, ch. 361, § 3, eff from and after passage (approved March 19, 1987).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in the third sentence of subsection (1). The words "the effective date of this act [Laws, 1987, Chapter 361. See Editor's Note below.]" were changed to "March 19, 1987." The Joint Committee ratified the correction at its May 16, 2002, meeting.

Cross References — Confidentiality of information relating to drug and alcohol testing, see § 71-7-15.

§ 71-3-121. Safety programs; employer policies for drug and alcohol testing; use of test results.

The Commissioner of Insurance shall promulgate such rules and regulations as to require each insurer to establish a safety program for the health and benefit of the employees of the insured employer. Such safety program shall include language to explain the rights of workers under the Workers' Compensation Law. Such safety program shall require that all insured employers implement a written policy for drug and alcohol testing in accordance with Section 71-7-1 et seq., Mississippi Code of 1972, in order to ensure that the workplace is a drug and alcohol free environment and to deter the use of drugs and alcohol at the workplace. Under such policy, if the employer has probable cause to suspect that an employee's injury was occasioned primarily by the intoxication of the employee or by the illegal use of any controlled substances that affected the employee to the extent that the employee's normal faculties were impaired, the employer may require the employee to submit to a test for the presence of any controlled substances or alcohol in his system.

The results of the employer-administered tests shall be considered admissible evidence solely on the issue of causation in the determination of intoxication of an employee at the time of injury for workers' compensation purposes under Section 71-3-7.

SOURCES: Laws, 1992, ch. 577, § 7, eff from and after passage (approved May 15, 1992).

§ 71-3-123. Report of commissioner on assigned risk plan and safety programs.

The Commissioner of Insurance shall submit a report consisting of the condition of the assigned risk plan and the safety programs established by insurers in accordance with Chapter 577, Laws of 1992 to the Senate and House Insurance Committees by January 1 of each year, beginning January 1, 1993.

SOURCES: Laws, 1992, ch. 577, § 8, eff from and after passage (approved May 15, 1992).

Editor's Note — Laws of 1992, ch. 577, added §§ 71-3-121 through 71-3-127, and amended several code sections. For a complete list of code sections affected by ch. 577, see Statutory Tables Volume, Table B, allocation of acts, 1992.

§ 71-3-125. Workers' compensation claims offices; provision of same services by contract; waiver.

(1) Each insurance carrier or commission approved self-insured employer shall maintain a workers' compensation claims office, subject to the waiver provisions herein, within the borders of the State of Mississippi beginning July 1, 1993. Alternatively, each insurance carrier or commission approved self-insured employer may provide by contract the same services within the borders of the State of Mississippi beginning July 1, 1993. This claims office shall maintain workers' compensation claims files and shall be the office responsible to the Mississippi Workers' Compensation Commission for the proper filing of all commission forms for the employer/insureds. This office shall be the sole contact for the commission for the administration of all claims filed within the jurisdiction of the Mississippi Workers' Compensation Commission. Authority to issue checks and to pay claims shall be vested in personnel located within the State of Mississippi.

The insurance carrier and self-insured employer shall notify the commission of the address of its claims office before July 1, 1992, and shall report any subsequent changes of address before the effective date of the change. After October 1, 1992, no processing or payment of workers' compensation claims shall occur outside the State of Mississippi without the specific written waiver by the commission.

Waiver requests must be submitted to the commission in writing and shall not be considered unless the applicant has exercised claims management and filing practices that illustrate proper compliance with the law and other commission regulations. Proper compliance shall be measured by the commission by continued monitoring of the timeliness of reporting by the carrier/self-insured employer and by monitoring the resolution, or lack thereof, of written complaints regarding noncompliance to all aspects of the Mississippi Workers' Compensation Law and rules of the commission and orders of the administrative law judges, commission or court.

The commission shall prepare a report at least twice each year as to the filing performance, first payment performance and problems resolution of each carrier and self-insured employer during the calendar year beginning January 1, 1993, and each successive year. Carrier's and self-insured employer's performance as measured in each calendar year shall be the basis for approval or continuation of the waiver beginning on July 1 of each successive year.

Any and all waivers previously granted by the commission under prior versions of this section are subject to review under this section in effect at the time the waiver request is submitted for approval or continuation.

(2) Any failure to comply with the provisions of Chapter 577, Laws of 1992, shall subject the carrier/self-insured employer to the sanctions of the Workers' Compensation Law.

SOURCES: Laws, 1992, ch. 577 § 9; Laws, 1993, ch. 552, § 4, eff from and after passage (approved April 13, 1993).

Editor's Note — Laws of 1992, ch. 577, added §§ 71-3-121 through 71-3-127, and amended several code sections. For a complete list of code sections affected by ch. 577, see Statutory Tables Volume, Table B, allocation of acts, 1992.

§ 71-3-127. Use of arbitrators to resolve disputes.

The Workers' Compensation Commission may utilize one or more arbitrators to resolve disputes under such procedures as prescribed by the commission in its uniform procedure rules.

SOURCES: Laws, 1992, ch. 577, § 10, eff from and after passage (approved May 15, 1992).

§ 71-3-129. Child and spousal support liens placed upon workers' compensation.

(1) The Mississippi Department of Human Services, Division of Child Support Enforcement (the department) or the obligee may cause a lien for unpaid and delinquent child or spousal support to be placed upon any workers' compensation benefits payable to an obligor delinquent in child support or spousal support payments where a minor child is living with such spouse and such maintenance or spousal support is collected in conjunction with child support.

(2) The lien shall be effective upon notice being filed with the Executive Director of the Mississippi Workers' Compensation Commission. The notice shall contain the name and address of the delinquent obligor, the Social Security number of the obligor, if known, the name of the obligee, and the amount of delinquent child or spousal support.

(3) Any person(s), firm(s), corporation(s), including an insurance carrier, making any payment of workers' compensation benefits to such obligor or to his attorney(s), heir(s) or legal representative(s), after receipt of such notice, if support has been assigned to the department pursuant to Section 43-19-31, Mississippi Code of 1972, shall be liable to the obligee. In such event, the lien may be enforced by the department against any person(s), firm(s), corporation(s) making the workers' compensation benefit payment.

(4) Upon the filing of a notice under this section, the Executive Director of the Mississippi Workers' Compensation Commission shall mail to the obligor and to all attorneys and insurance carriers of record, a copy of the notice. The obligor, attorneys and insurance carriers shall be deemed to have received the notice within five (5) days of the mailing of the notice by the Executive Director of the Mississippi Workers' Compensation Commission. The lien described in

this section shall attach to all workers' compensation benefits which are thereafter payable.

(5) In cases in which the department is not a party, the obligee or his attorney shall file notice of the lien with such payor as described in subsection (3) above. This notice shall have attached a certified copy of the court order with all modifications and a sworn statement by the obligee attesting to or certifying the amount of the arrearages.

(6) Notice of the lien shall be filed with the Executive Director of the Mississippi Workers' Compensation Commission either by serving a certified copy of the court order by first class mail; or by transmittal of the information described in subsection (2) via automated means.

(7) Any amount deducted and withheld pursuant to subsection (1) shall be paid by the commission to the department.

(8) Any amount deducted and withheld pursuant to subsection (1) shall for all purposes be treated as if it were paid to the individual as benefits and paid by such individual to the department in satisfaction of the individual's child support obligations.

(9) For purposes of this section, the term "benefits" means any compensation payable under this chapter (including amounts payable by the commission pursuant to an agreement under any federal law providing for compensation, assistance or allowances with respect to injury or death).

(10) The department and the Mississippi Workers' Compensation Commission may enter into agreements to carry out the provisions of subsection (6) of this section.

(11) The term "child support obligation" shall be as defined in Section 93-11-101, Mississippi Code of 1972.

SOURCES: Laws, 1997, ch. 588, § 144, eff from and after July 1, 1997.

Editor's Note — Laws of 1997, ch. 588, § 150, provides as follows:
"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

RESEARCH REFERENCES

ALR. Validity, construction, and effect of statutory exemptions of proceeds of workers compensation awards. 48 A.L.R.5th 473.

Enforcement of claim for alimony or support, or for attorneys' fees and costs incurred in connection therewith, against exemptions. 52 A.L.R.5th 221.

MISSISSIPPI WORKERS' COMPENSATION SELF-INSURER GUARANTY ASSOCIATION LAW

SEC.
71-3-151. Title.
71-3-153. Purpose and application.
71-3-155. Workers' compensation self-insurer guaranty association law to be liberally construed.

71-3-157. Definitions.
71-3-159. Workers' Compensation Individual Self-insurer Guaranty Association and Workers' Compensation Group Self-insurer Guaranty Association.
71-3-161. Board of directors of associations.
71-3-163. Powers, duties and obligations of the associations.
71-3-165. Plan of operation of associations.
71-3-167. Duties and powers of the commission.
71-3-169. Assignment of rights under workers' compensation law to association; claims by association against insolvent self-insurer.
71-3-171. Repealed.
71-3-173. Examination of association members; powers and duties of the board of directors; detection and prevention of insolvency of members of association.
71-3-174. Special assessment plans where association assumes obligations of individual or group self-insurer exceeding the assets of such association.
71-3-175. Association subject to examination; annual financial report.
71-3-177. Association exempt from fees and taxes.
71-3-179. Immunity from liability.
71-3-181. Stay of proceedings involving self-insurer in default.

§ 71-3-151. Title.

Sections 71-3-151 through 71-3-181 shall be known and may be cited as the "Mississippi Workers' Compensation Self-insurer Guaranty Association Law."

SOURCES: Laws, 1988, ch. 554, § 1, eff from and after July 1, 1988.

Editor's Note — Pursuant to § 71-3-159, the Mississippi Workers' Compensation Self-Insurer Guaranty Association was renamed the Mississippi Workers' Compensation Individual Self-insurer Guaranty Association.

RESEARCH REFERENCES

Am Jur. 82 Am. Jur. 2d, Workers' Compensation § 608.

Practice References. Larson's Workers' Compensation Law (Matthew Bender).

§ 71-3-153. Purpose and application.

The purpose of Sections 71-3-151 through 71-3-181 is to provide a mechanism for the payment of the covered claims under the Workers' Compensation Law, to avoid excessive delay in payment and to avoid financial loss to claimants because of the insolvency of a self-insurer, to assist in the detection and prevention of self-insurer insolvencies, and to provide associations to assess the cost of such protection among self-insurers.

Sections 71-3-151 through 71-3-181 shall apply to all employers who are self-insurers under the provisions of Section 71-3-75, Mississippi Code of 1972.

SOURCES: Laws, 1988, ch. 554, § 2; Laws, 2004, ch. 555, § 1, eff from and after July 1, 2004.

RESEARCH REFERENCES

Am Jur. 50 Am. Jur. Proof of Facts 2d 187, Discharge from Employment in Retaliation for Filing Worker's Compensation Claim.

§ 71-3-155. Workers' compensation self-insurer guaranty association law to be liberally construed.

Sections 71-3-151 through 71-3-181 shall be liberally construed to effect the purpose under Section 71-3-153, which shall constitute an aid and guide to interpretation.

SOURCES: Laws, 1988, ch. 554, § 3, eff from and after July 1, 1988.

§ 71-3-157. Definitions.

For the purposes of Sections 71-3-151 through 71-3-181, the following words shall have the meanings ascribed herein unless the context shall otherwise require:

(a) "Individual association" means the Mississippi Workers' Compensation Individual Self-insurer Guaranty Association created under Section 71-3-159.

(b) "Group association" means the Mississippi Workers' Compensation Group Self-insurer Guaranty Association created under Section 71-3-159.

(c) "Commission" means the Mississippi Workers' Compensation Commission.

(d) "Compensation" means amounts payable to claimants under the Mississippi Workers' Compensation Law as defined in Section 71-3-3(j), Mississippi Code of 1972.

(e) "Covered claim" means an unpaid claim upon which compensation or medical is payable by an individual self-insurer or a group self-insurer under the Workers' Compensation Law.

(f) "Self-insurer in default" means an individual self-insurer or a group self-insurer as defined by this chapter that has defaulted or failed for any reason to satisfy any of its obligations under the Workers' Compensation Law, including, without limitation, all obligations for payment of indemnity compensation, disability, expenses of medical, hospital, surgical, rehabilitation and other services, death benefits and funeral expenses, whether such default or failure is the result of insolvency or bankruptcy or receivership or otherwise.

(g) "Member self-insurer" means a self-insurer as defined by this chapter who is a member of the Mississippi Workers' Compensation Individual Self-insurer Guaranty Association or the Mississippi Workers' Compensation Group Self-insurer Guaranty Association.

(h) "Individual self-insurer" is an employer who has been authorized under Section 71-3-75(2), Mississippi Code of 1972, to insure under the Workers' Compensation Law.

(i) "Group self-insurer" is a group of employers who have been authorized under Section 71-3-75(3), Mississippi Code of 1972, to insure under the Workers' Compensation Law.

(j) "Person" means any individual, corporation, partnership, association or voluntary organization.

SOURCES: Laws, 1988, ch. 554, § 4; Laws, 2003, ch. 553, § 1; Laws, 2004, ch. 555, § 2, eff from and after July 1, 2004.

§ 71-3-159. Workers' Compensation Individual Self-insurer Guaranty Association and Workers' Compensation Group Self-insurer Guaranty Association.

The Mississippi Workers' Compensation Self-insurer Guaranty Association created under this chapter shall be renamed as the "Mississippi Workers' Compensation Individual Self-insurer Guaranty Association" and there is created a separate nonprofit unincorporated legal entity to be known as the "Mississippi Workers' Compensation Group Self-insurer Guaranty Association." All individual self-insurers shall be and remain members of the individual association and all group self-insurers shall be and remain members of the group association as a condition of their authority under Section 71-3-75, Mississippi Code of 1972. These associations shall perform their functions under plan s of operation established and approved under Section 71-3-165 and shall exercise their powers through boards of directors established under Section 71-3-161. However, any individual or group self-insurer composed of the state, or any agency thereof, or county or municipal governments shall not be required to be members of the individual association or the group association.

SOURCES: Laws, 1988, ch. 554, § 5; Laws, 2004, ch. 555, § 3, eff from and after July 1, 2004.

Cross References — Application of this section to the definition of "association", see § 71-3-157.

RESEARCH REFERENCES

Am Jur. 82 Am. Jur. 2d, Workmen's Compensation § 608.

§ 71-3-161. Board of directors of associations.

(1) The boards of directors of the individual association and the group association shall each consist of not less than five (5) nor more than nine (9) persons, serving terms as established in their plans of operation. The members of each of the boards shall be selected by their respective member self-insurers,

subject to the approval of the commission. Vacancies of the boards shall be filled for the remaining period of the term in the same manner as initial appointments.

(2) In approving selections to the boards, the commission shall consider, among other things, whether all member self-insurers of their respective association are fairly represented.

(3) Subject to board approval, members of the boards may be reimbursed from the assets of their respective associations for expenses, including, but not limited to, attorney fees, incurred by them as members of the boards of directors.

SOURCES: Laws, 1988, ch. 554, § 6; Laws, 2004, ch. 555, § 4, eff from and after July 1, 2004.

Cross References — Direction that the workers' compensation self-insurer guaranty association exercise its powers through a board of directors established under this section, see § 71-3-159.

Direction that the association's plan of operation establish the amount and method of reimbursing members of the board of directors, see § 71-3-165.

§ 71-3-163. Powers, duties and obligations of the associations.

(1) Each association shall:

(a) Be obligated to the extent of its covered claims existing prior to the date of default and arising within thirty (30) days after the date of default. In no event shall an association be obligated to a claimant in an amount in excess of the obligation of the defaulting member self-insurer of such association.

(b) Be deemed the self-insurer to the extent of obligations on its covered claims and to such extent shall have all rights, duties and obligations of the individual self-insurer in default or insolvent group self-insurer in default as if such self-insurer were not in default.

(c) Assess its respective individual self-insurers or group self-insurers amounts necessary to pay the obligations of the association under subsection (2) of this section, the expenses of handling covered claims and other expenses authorized by Sections 71-3-151 through 71-3-181. The assessments of each individual self-insurer and each group self-insurer shall be two percent (2%) of the gross paid compensation and medical supplies and services of said member self-insurer during each period of six (6) months. Said two percent (2%) assessment shall be collected by the commission at the same time as and pursuant to the procedures adopted by the commission pursuant to Section 71-3-99, Mississippi Code of 1972. If the obligations of the individual association incurred on or after July 1, 2004, for covered claims arising before July 1, 2004, plus necessary expenses of the individual association incurred on or after July 1, 2004, in evaluating, adjusting, defending or settling such covered claims, exceed the total amount of funds held by the individual association on July 1, 2004, then and to that extent all individual employers and groups of employers who were self-insurers on the dates that the covered claims arose shall be liable for a special assessment in the amount of such deficiency. This special assessment shall be collected by the commission in accordance with the procedures adopted by the commission under Section 71-3-99. All obligations for covered claims arising on or after July 1, 2004, shall be the sole obligation of the association to which the self-insurer in default belongs. The two percent (2%) assessment on each individual self-insurer and on each group self-insurer shall be collected by the commission until the sum of Two Million Dollars ($2,000,000.00) is accumulated by the individual association and the sum of One Million Dollars ($1,000,000.00) is accumulated by the group association. At that time the assessments shall be suspended. However, any employer that becomes authorized under Section 71-3-75 to be a member self-insurer after July 1, 1996, is not entitled to have the two percent (2%) assessment suspended until such member self-insurer has contributed to the guaranty fund to which it belongs for the first four (4) years such employer is a member self-insurer regardless of the amount in the guaranty fund of the association to which it belongs. The two percent (2%) assessment shall be reinstituted for all member self-insurers of the individual association at any time that the guaranty fund balance of the individual association reaches One Million Five Hundred Thousand Dollars ($1,500,000.00) and such assessment shall continue until such time as the balance is Two Million Dollars ($2,000,000.00). The two percent (2%) assessment shall be reinstituted for all member self-insurers of the group association at any time that the guaranty fund balance of the group association reaches Seven Hundred Fifty Thousand Dollars ($750,000.00) and such assessment shall continue until such time as the balance is One Million Dollars ($1,000,000.00). If the maximum assessment, together with the other assets of an association, does not provide in any one (1) year an amount sufficient to make all necessary payments, the funds available in such association shall be paid as directed by the commission and any unpaid portion shall be paid as soon thereafter as funds in such association become available. When the guaranty fund balance of the group association reaches One Million Dollars ($1,000,000.00), the commission may waive the need for bonding requirements for self-funded pools.

(d) Investigate claims brought against the association; adjust, compromise, settle and pay covered claims to the extent of the association's obligations; deny all other claims; and may review settlements, releases and judgments to which the member self-insurer in default were parties to determine the extent to which such settlements, releases and judgments may be properly contested.

(e) Notify such persons as the commission directs under Section 71-3-167(2)(a).

(f) Handle claims through its employees or through one or more other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commission.

(g) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association, and shall pay the other expenses of the association authorized by Sections 71-3-151 through 71-3-181.

(2) Each association may:

(a) Employ or retain such persons as are necessary to handle claims and perform other duties of the association.

(b) Sue or be sued.

(c) Negotiate and become a party to such contracts as are necessary to carry out the purposes of Sections 71-3-151 through 71-3-181.

(d) Perform such other acts as are necessary or proper to effectuate the purposes of Sections 71-3-151 through 71-3-181.

SOURCES: Laws, 1988, ch. 554, § 7; Laws, 1990, ch. 540, § 1; Laws, 1996, ch. 360, § 1; Laws, 2003, ch. 553, § 2; Laws, 2004, ch. 555, § 5, eff from and after July 1, 2004.

Cross References — Authority for the association to delegate all of its powers and duties except those under this section to a corporation or other organization to perform similar functions, see § 71-3-165.

Direction that the association's plan of operation establish procedures whereby all the powers and duties of the association under this section will be performed, see § 71-3-165.

RESEARCH REFERENCES

ALR. Duty of liability insurer to initiate settlement negotiations. 51 A.L.R.5th 701.

§ 71-3-165. Plan of operation of associations.

(1) Each association shall submit to the commission a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the commission.

(2) If at any time an association fails to submit suitable amendments to its plan, the commission shall, after notice and hearings, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of Sections 71-3-151 through 71-3-181. Such rules shall continue in force until modified by the commission or superseded by a plan submitted by the noncomplying association and approved by the commission.

(3) All member self-insurers shall comply with the plan of operation of the association to which they belong. The plan of operation of each association shall:

(a) Establish the procedures whereby all the powers and duties of the association under Section 71-3-163 will be performed.

(b) Establish procedures for handling assets of the association.

(c) Establish the amount and method of reimbursing members of the board of directors under Section 71-3-161.

(d) Establish procedures by which claims may be filed with the association, and establish acceptable forms of proof of covered claims.

(e) Establish regular places and times for meetings of the board of directors.

(f) Establish procedures for records to be kept of all financial transactions of the association, its agents and the board of directors.

(g) Provide that any individual self-insurer or group self-insurer aggrieved by any final action or decision of the association to which it belongs may appeal to the commission within thirty (30) days after the action or decision.

(h) Establish the procedures whereby selections for the board of directors will be submitted to the commission.

(i) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation of each association may provide that any or all powers and duties of the association, except those under Section 71-3-163(1)(c) and Section 71-3-174, are delegated to a corporation, association or other organization which performs or will perform functions similar to those of the association. Such a corporation, association or organization shall be reimbursed as a servicing facility would be reimbursed, and shall be paid for its performance of any other functions of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors of the association and the commission, and may be made only to a corporation, association or organization which extends protection not substantially less favorable and effective than that provided by Sections 71-3-151 through 71-3-181.

SOURCES: Laws, 1988, ch. 554, § 8; Laws, 2003, ch. 553, § 3; Laws, 2004, ch. 555, § 6, eff from and after July 1, 2004.

Cross References — Direction that the workers' compensation self-insurer guaranty association perform its functions under a plan of operation established and approved under this section, see § 71-3-159.

RESEARCH REFERENCES

Am Jur. 82 Am. Jur. 2d, Workers' Compensation § 608.

§ 71-3-167. Duties and powers of the commission.

(1) The commission shall:

(a) Upon the request of an association or of any other party or without any request on its own motion, enter any appropriate order finding a member self-insurer to be in default and to determine the date of such default and promptly notify the association to which such member self-insurer belongs of the existence of such default and the date of such default.

(b) Upon request of the board of directors of an association, provide such association with a statement of compensation payments of each member self-insurer of such association.

(2) The commission may:

(a) Require that the group association notify the member self-insurers of any group self-insurer in default and any other interested parties of the default. Such notification shall be by mail at their last known address, where available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation shall be sufficient.

(b) Suspend or revoke, after notice and hearing, the authority to self-insure granted under Section 71-3-75, Mississippi Code of 1972, of any member self-insurer who fails to pay an assessment when due, or fails to comply with the plan of operation of the association to which it belongs. As an alternative, the commission may levy a fine on any member self-insurer who fails to pay an assessment when due or fails to comply with the plan of operation. Such fine shall not exceed five percent (5%) of the unpaid assessment per month, except that no fine shall be less than One Hundred Dollars ($100.00) per month.

(c) Revoke the designation of any servicing facility if it finds claims are being handled unsatisfactorily.

(3) Any final action or order of the commission under Sections 71-3-151 through 71-3-181 shall be subject to judicial review in a court of competent jurisdiction.

SOURCES: Laws, 1988, ch. 554, § 9; Laws, 2003, ch. 553, § 4; Laws, 2004, ch. 555, § 7, eff from and after July 1, 2004.

Cross References — Duty of the association to give notice as directed by the commission under this section, see § 71-3-163.

RESEARCH REFERENCES

Am Jur. 82 Am. Jur. 2d, Workers' Compensation §§ 608.

§ 71-3-169. Assignment of rights under workers' compensation law to association; claims by association against insolvent self-insurer.

(1) Any person recovering from an association under Sections 71-3-151 through 71-3-181 shall be deemed to have assigned his rights under the Workers' Compensation Law to such association to the extent of his recovery from such association. Any claimant seeking the protection of Sections 71-3-151 through 71-3-181 shall cooperate with the association against which claim is made to the same extent as such person would have been required to cooperate with the member self-insurer in default. Such association shall have no cause of action under the Workers' Compensation Law against the claimant

of the member self-insurer in default for any sums it has paid out except such causes of action as such member self-insurer in default would have had if such sums had been paid by such member self-insurer in default.

(2) An association may recover from the self-insurer in default and from a group self-insurer in default all amounts paid by such association on account of covered claims of employees of the member self-insurer in default and any group self-insurer in default to which such member self-insurer in default belongs, as well as all expenses incurred by such association in evaluating, adjusting, defending or settling covered claims of such employees. It shall be presumed that all amounts paid by such association under this section are reasonable, necessary and otherwise in compliance with this chapter. There shall be added to any recovery under this section expenses of litigation of such association in obtaining such recovery, interest at the rate of eight percent (8%) per annum commencing on the date of such default and a ten percent (10%) penalty.

SOURCES: Laws, 1988, ch. 554, § 10; Laws, 2003, ch. 553, § 5; Laws, 2004, ch. 555, § 8, eff from and after July 1, 2004.

§ 71-3-171. Repealed.

Repealed by Laws, 2003, ch. 553, § 9, eff from and after July 1, 2003. [Laws, 1988, ch. 554, § 11, eff from and after July 1, 1988.]

Editor's Note — Former § 71-3-171 provided for recovery under another insurance guaranty association.

§ 71-3-173. Examination of association members; powers and duties of the board of directors; detection and prevention of insolvency of members of association.

To aid in the detection and prevention of individual self-insurer insolvencies and group self-insurer insolvencies:

(a) The board of directors of an association may, upon majority vote, request that the commission order an examination of any of its member self-insurers and group self-insurers which the board in good faith believes may be in a financial condition hazardous to the potential claimants or the public. Upon making any such request to the commission, such board of directors shall recommend for commission approval persons to perform the examination. The examination shall commence within thirty (30) days following the commission's approval of such request for examination. The commission may request a board of directors to recommend for commission approval, and a board of directors can request the commission to approve, alternative persons to complete an examination if it is believed the examination is not being performed in a timely and efficient manner. The cost of such examination shall be paid by the association requesting such examination, and examination reports shall be forwarded to the commission and treated as are other examination reports. In no event shall reports of such examination be released to the board of directors of such association prior to release to the public, but this shall not preclude the commission from complying with paragraph (b) of this section. The commission shall notify the board of directors of such association when the examination is completed. Each request for an examination by an association shall be kept on file by the commission, but it shall not be open to public inspection prior to the release of an examination report to the public.

(b) It shall be the duty of the commission to report to the board of directors of an association when it has reasonable cause to believe that any member self-insurer or group self-insurer examined or being examined at the request of the board of directors of such association may be insolvent or in a financial condition hazardous to potential claimants or the public.

(c) The board of directors of an association may, upon majority vote, make reports and recommendations to the commission upon any matter germane to the solvency, bankruptcy or reorganization of any of its member self-insurer s and group self-insurers. Such reports and recommendations shall not be considered public documents.

(d) The board of directors of an association may, upon majority vote, make recommendations to the commission for the detection and prevention of member self-insurer insolvencies and group self-insurer insolvencies.

(e) The board of directors of an association shall, at the conclusion of any insolvency, bankruptcy case or default where such association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency and bankruptcy, based on the information available to such association, and submit such report to the commission.

SOURCES: Laws, 1988, ch. 554, § 12; Laws, 2003, ch. 553, § 6; Laws, 2004, ch. 555, § 9, eff from and after July 1, 2004.

§ 71-3-174. Special assessment plans where association assumes obligations of individual or group self-insurer exceeding the assets of such association.

If an association assumes any obligations of an individual self-insurer or group self-insurer under this chapter, and payments of such obligations exceed the assets of such association, such association shall within not less than sixty (60) days thereafter submit for approval by the commission a plan for special assessment of each individual self-insurer and group self-insurer who may be responsible for payment of such obligations in excess of the assets of such association. Such plan for special assessment shall also include the expenses of such association related to the processing of obligations covered by the special assessment plan. Failure to comply with a commission-approved special assessment plan of an association shall create a cause of action in favor of such association against any noncompliant member self-insurer and any noncompliant group self-insurer for recovery of payments and expenses by such association for which the noncompliant member self-insurer or noncompliant group self-insurer should have been obligated. It shall be presumed that all obligations paid by an association pursuant to a commission-approved special assessment plan, including, but not limited to, expenses associated with processing such obligations, are reasonable, necessary and otherwise in compliance with the requirements of this chapter. There shall be added to any recovery under this section expenses of litigation of such association related to such cause of action, interest at the rate of eight percent (8%) per annum beginning on the date of such noncompliance and a ten percent (10%) penalty.

SOURCES: Laws, 2004, ch. 555, § 10, eff from and after July 1, 2004.

§ 71-3-175. Association subject to examination; annual financial report.

The individual association and group association shall be subject to examination and regulation by the commission. The board of directors of each association shall submit, not later than March 30 of each year, a financial report for the preceding calendar year in a form approved by the commission. The commission shall furnish the board of directors of an association any records of the commission which would aid in the preparation of this financial report.

SOURCES: Laws, 1988, ch. 554, § 13; Laws, 2004, ch. 555, § 11, eff from and after July 1, 2004.

§ 71-3-177. Association exempt from fees and taxes.

The individual association and group association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions except taxes levied on real or personal property.

SOURCES: Laws, 1988, ch. 554, § 14; Laws, 2004, ch. 555, § 12, eff from and after July 1, 2004.

§ 71-3-179. Immunity from liability.

Subject to Section 71-3-174, there shall be no liability on the part of and no cause of action of any nature shall arise against any individual self-insurer, any group self-insurer, association, agents and employees of an association, board of directors of an association, and the commission and its employees and representatives, or any of them, for any good faith, affirmative action taken by any of them in the performance of their powers and duties under Sections 71-3-151 through 71-3-181. This section does not apply to individual employers who are members of a group self-insurer. Such immunity shall not extend to any acts of gross negligence by any such individual self-insurer, group self-insurer, association, agents and employees of an association, board of directors of an association and the commission and its employees and representative committed in the performance of their duties hereunder.

SOURCES: Laws, 1988, ch. 554, § 15; Laws, 2003, ch. 553, § 7; Laws, 2004, ch. 555, § 13, eff from and after July 1, 2004.

§ 71-3-181. Stay of proceedings involving self-insurer in default.

All proceedings in which any individual self-insurer in default or group self-insurer in default is a party before the commission or in any court in this state, on order of the commission, may be stayed for a period not to exceed six (6) months from the date of the default to permit proper defense by such association of all covered claims. If any judgment, order, decision, verdict or finding is made or entered against such individual self-insurer in default or group self-insurer in default while the stay provided in this section is effective, the association to which such individual self-insurer or group self-insurer belongs may apply to have such judgment, order, decision, verdict or finding set aside by the same court or administrator that made such judgment, order, decision, verdict or finding. Such association shall be permitted to enter its appearance and defend against any covered claim which is pending on the date of default or which is filed thereafter.

SOURCES: Laws, 1988, ch. 554, § 16; Laws, 2003, ch. 553, § 8; Laws, 2004, ch. 555, § 14, eff from and after July 1, 2004.

DRUG-FREE WORKPLACE WORKERS' COMPENSATION PREMIUM REDUCTION ACT

SEC.
71-3-201. Title.
71-3-203. Legislative Intent.
71-3-205. Definitions.
71-3-207. Implementation of drug-free workplace program; qualification of employer of premium reduction.
71-3-209. Elements of drug-free workplace program.
71-3-211. Employer's written policy statement on substance abuse.
71-3-213. Qualification as private sector drug-free workplace.
71-3-215. Education program on alcohol and drug abuse.
71-3-217. Training of supervisory personnel.
71-3-219. Confidentiality of results of substance abuse program.
71-3-221. Failure of employer to establish substance abuse program.
71-3-223. Relation to other laws.
71-3-225. Severability.

§ 71-3-201. Title.

Sections 71-3-201 through 71-3-225 shall be known and may be cited as the "Drug-Free Workplace Workers' Compensation Premium Reduction Act."

SOURCES: Laws, 1997, ch. 455, § 1, eff from and after July 1, 1997.

Federal Aspects — Drug-Free Workplace Act of 1988, see 41 USCS §§ 701 et seq.

RESEARCH REFERENCES

ALR. Liability for discharge of at-will employee for refusal to submit to drug testing. 79 A.L.R.4th 109.

Am Jur. 82 Am. Jur. 2d, Wrongful Discharge § 29.

§ 71-3-203. Legislative Intent.

It is the intent of the Legislature to promote drug-free workplaces in order that employers in this state be afforded the opportunity to maximize their levels of productivity, enhance their competitive positions in the marketplace, and reach their desired levels of success without experiencing the costs, delays and tragedies associated with work-related accidents resulting from substance abuse by employees.

SOURCES: Laws, 1997, ch. 455, § 2, eff from and after July 1, 1997.

§ 71-3-205. Definitions.

The following words and terms in Sections 71-3-201 through 71-3-225 shall have meanings as follows:

(a) "Employee" means any person who works for salary, wages or other remuneration for an employer.

(b) "Employer" means a person or entity that is subject to the Mississippi Workers' Compensation Law as found in Section 71-3-1 et seq., Mississippi Code of 1972.

SOURCES: Laws, 1997, ch. 455, § 3, eff from and after July 1, 1997.

§ 71-3-207. Implementation of drug-free workplace program; qualification of employer of premium reduction.

(1) If an employer implements a drug-free workplace program substantially in accordance with Sections 71-3-201 through 71-3-225, the employer shall qualify for certification for a five percent (5%) premium discount if offered under the employer's workers' compensation insurance policy.

(2) For each policy of workers' compensation insurance issued or renewed in the state on or after July 1, 1997, a five percent (5%) reduction in the premium for such policy may be granted by the insurer if the insured certifies to the insurer that it has established and maintains a drug-free workplace program that complies with the requirements of Sections 71-3-201 through 71-3-225.

(3) The premium discount provided by this section shall be applied to an insured's workers' compensation insurance pro rata as of the date of receipt of certification by the insurer.

(4) The Workers' Compensation Commission shall promulgate appropriate forms and procedures to allow self-certification by an insured to its insurer. Certification by an insured shall be required for each year in which a premium discount is granted.

(5) The insured's workers' compensation insurance policy shall be subject to an additional premium for the purposes of reimbursement of a previously granted premium discount if it is determined that such insured misrepresented the compliance of its drug-free workplace program within the provisions of Sections 71-3-201 through 71-3-225.

(6) The Workers' Compensation Commission shall be authorized to promulgate rules and regulations necessary for the implementation and enforcement of this section.

SOURCES: Laws, 1997, ch. 455, § 4, eff from and after July 1, 1997.

Cross References — Workers Compensation Commission, see § 71-3-85.

§ 71-3-209. Elements of drug-free workplace program.

A drug-free workplace program must contain the following elements:

(a) Written policy statement as provided in Section 71-3-211;

(b) Comply with the substance abuse testing procedures as provided in Sections 71-7-1 through 71-7-33, Mississippi Code of 1972, if testing is initiated by the employer;

(c) Resources of employee assistance providers or other rehabilitation resources, maintained in accordance with Section 71-3-213;

(d) Employee education as provided in Section 71-3-215; and

(e) Supervisor training in accordance with Section 71-3-217.

SOURCES: Laws, 1997, ch. 455, § 5, eff from and after July 1, 1997.

RESEARCH REFERENCES

ALR. Liability for discharge of at-will employee for refusal to submit to drug testing. 79 A.L.R.4th 109.

Am Jur. 82 Am. Jur. 2d, Wrongful Discharge § 29.

§ 71-3-211. Employer's written policy statement on substance abuse.

A drug-free workplace must provide a written policy statement on substance abuse in order to qualify for the provisions of Section 71-3-207. All employees must be given a written policy statement from the employer that contains:

(a) A general statement of the employer's policy on substance abuse notifying employees that the unlawful manufacture, sale, distribution, solicitation, possession with intent to sell or distribute, or use of alcohol or other drugs is prohibited in the person's workplace;

(b) A statement advising an employee or job applicant of the existence of Sections 71-3-201 through 71-3-225;

(c) A general statement concerning confidentiality;

(d) A statement advising an employee of the employee assistance program, external employee assistance program, or the employer's resource file of employee assistance programs and other persons, entities or organizations designed to assist employees with personal or behavioral problems;

(e) A statement informing an employee of the provisions of the federal Drug-Free Workplace Act if applicable to the employer.

SOURCES: Laws, 1997, ch. 455, § 6, eff from and after July 1, 1997.

Federal Aspects — Drug-Free Workplace Act of 1988, see 41 USCS §§ 701 et seq.

§ 71-3-213. Qualification as private sector drug-free workplace.

In order for an employer's workplace to qualify as a private sector drug-free workplace and to qualify for the provisions of Section 71-3-207, the following must be met:

(a) If an employer has an employee assistance program, the employer must inform the employee of the benefits and services of the employee assistance program. An employer shall post notice of the employee assistance program in conspicuous places and explore alternatives to publicize such services. In addition, the employer must provide the employee with notice of the policies and procedures regarding access to and utilization of the program.

(b) If an employer does not have an employee assistance program, the employer must maintain a resource file of employee assistance service providers, alcohol and other drug abuse programs, mental health providers, and other persons, entities or organizations available to assist employees with personal or behavioral problems. The employer shall provide all employees information about the existence of the resource file and a summary of the information contained within the resource file. The summary should contain, but need not be limited to, all information necessary to access the services listed in the resource file. In addition, the employer shall post in conspicuous places a listing of multiple employee assistance providers in the area.

SOURCES: Laws, 1997, ch. 455, § 7, eff from and after July 1, 1997.

§ 71-3-215. Education program on alcohol and drug abuse.

An employer must provide all employees with an education program on alcohol and other drug abuse prior to instituting a private sector drug-free workplace program under Sections 71-3-201 through 71-3-225. Also, an employer must provide all employees with an annual education program on alcohol and other drug abuse, in general, and its effects on the workplace, specifically. An education program for a minimum of one (1) hour should include, but is not limited to, the following information:

(a) The explanation of the disease of addiction for alcohol and other drugs;

(b) The effects and dangers of the commonly abused substances in the workplace; and

(c) The company's policies and procedures regarding alcohol and other drug use or abuse in the workplace and how employees who wish to obtain substance abuse treatment can do so.

SOURCES: Laws, 1997, ch. 455, § 8, eff from and after July 1, 1997.

Cross References — Employer's written policy on substance abuse, see § 71-3-211.

§ 71-3-217. Training of supervisory personnel.

In order to qualify as a private sector drug-free workplace and to qualify for the provisions of Section 71-3-207, and in addition to the educational program provided in Section 71-3-215, an employer must provide all supervisory personnel a minimum of two (2) hours of training prior to the institution of a drug-free workplace program under Sections 71-3-201 through 71-3-225, and each year thereafter which should include, but is not limited to, the following:

(a) Recognition of evidence of employee alcohol and other drug abuse;

(b) Documentation and corroboration of employee alcohol and other drug abuse;

(c) Referral of alcohol and other drug abusing employees to the proper treatment providers;

(d) Recognition of the benefits of referring alcohol and other drug abusing employees to treatment programs, in terms of employee health and safety and company savings; and

(e) Explanation of any employee health insurance of HMO coverage for alcohol and other drug problems.

SOURCES: Laws, 1997, ch. 455, § 9, eff from and after July 1, 1997.

§ 71-3-219. Confidentiality of results of substance abuse program.

(1) All information, interview, reports, statements, memoranda and test results, written or otherwise, received by the employer through a substance abuse program are confidential communications as they pertain to the employee only and may not be used or received in evidence, obtained in discovery or disclosed in any public or private proceedings, except as provided in Sections 71-7-1 through 71-7-33, Mississippi Code of 1972.

(2) Release of any such information under any other circumstance shall be solely pursuant to a written consent form signed voluntarily by the person tested, unless such release is compelled by an agency of the state or a court of competent jurisdiction or unless deemed appropriate by a professional or occupational licensing board in a related disciplinary proceeding. The consent form must contain at a minimum:

(a) The name of the person who is authorized to obtain the information;

(b) The purpose of the disclosure;
(c) The precise information to be disclosed;
(d) The duration of the consent; and
(e) The signature of the person authorizing release of the information.

(3) Nothing in Sections 71-3-201 through 71-3-225 shall be construed to call for actions that may violate federal or state confidentiality statutes for employee assistance professionals and alcohol and other drug abuse counseling or treatment providers.

SOURCES: Laws, 1997, ch. 455, § 10, eff from and after July 1, 1997.

§ 71-3-221. Failure of employer to establish substance abuse program.

No cause of action shall arise in favor of any person against an employer based upon the failure of an employer to establish a substance abuse program in accordance with Sections 71-3-201 through 71-3-225.

SOURCES: Laws, 1997, ch. 455, § 11, eff from and after July 1, 1997.

§ 71-3-223. Relation to other laws.

Nothing in Sections 71-3-201 through 71-3-225 shall be construed to operate retroactively, and nothing in Sections 71-3-201 through 71-3-225 shall abrogate the right of an employer under state law to conduct substance abuse tests, or implement employee substance abuse testing programs. Only those programs that meet the criteria outlined in Sections 71-3-201 through 71-3-225 qualify for reduced workers' compensation insurance rates under Section 71-3-207.

SOURCES: Laws, 1997, ch. 455, § 12, eff from and after July 1, 1997.

§ 71-3-225. Severability.

If any provision of Sections 71-3-201 through 71-3-225 or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of Sections 71-3-201 through 71-3-225 that can be given effect without the invalid provision or application, and to this end the provisions of Sections 71-3-201 through 71-3-225 are severable.

SOURCES: Laws, 1997, ch. 455, § 13, eff from and after July 1, 1997.

CHAPTER 5

Unemployment Compensation

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ARTICLE 1.

GENERAL PROVISIONS.

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§ 71-5-1. Citation and purpose.

This chapter shall be known and may be cited as the "Mississippi Employment Security Law." The purpose of the law is to promote employment security by increasing opportunities for placement through the maintenance of a system of public employment offices and to provide through the accumulation of reserves for the payment of compensation to individuals with respect to their unemployment.

SOURCES: Codes, 1942, § 7368; Laws, 1936, ch. 176; Laws, 1948, ch. 412, § 1, eff July 1, 1948, unless context expressly provides otherwise.

Cross References — Free public employment offices, see § 71-5-201.
Payment of unemployment compensation benefits, see §§ 71-5-501 et seq.
Federal Aspects — Federal Unemployment Tax Act, 26 USCS §§ 3301 et seq.

JUDICIAL DECISIONS

1. In general.

Economic insecurity due to involuntary unemployment is the menace and evil that the legislature attempted to overcome and conquer when it enacted the Employment Security Law. Mississippi Emp. Sec. Comm'n v. B.C. Rogers & Sons, 193 So. 2d 564 (Miss. 1967).

The legislative intent of the test for the employer-employee relationship under the Employment Security Law is obtained by an application of the principles of the common law of master and servant. Mississippi Emp. Sec. Comm'n v. Heidelberg Hotel Co., 211 Miss. 104, 51 So. 2d 47 (1951).

RESEARCH REFERENCES

ALR. Constitutionality, construction, and application of provision of Unemployment Compensation Act subjecting to its provisions an employer purchasing or succeeding to the business of another employer. 4 A.L.R.2d 721.

Taxicab driver as employee of owner of cab, or independent contractor, within social security and unemployment insurance statutes. 10 A.L.R.2d 369.

Declaratory relief with respect to unemployment compensation. 14 A.L.R.2d 826.

Leaving employment, or unavailability for particular job or duties, because of sickness or disability, as affecting right to unemployment compensation. 14 A.L.R.2d 1308.

Vested right of applicant for unemployment compensation in mode and manner of computing benefits in effect at time of his discharge or loss of employment. 20 A.L.R.2d 963.

Unemployment compensation: right of successor in business to experience or rating of predecessor for purpose of fixing rate of contributions. 22 A.L.R.2d 673.

Salesman on commission as within unemployment compensation or social security acts. 29 A.L.R.2d 751.

What constitutes "agricultural" or "farm" labor within Social Security or Unemployment Compensation Acts. 53 A.L.R.2d 406.

Right to unemployment compensation of claimant who refuses nonunion employment. 56 A.L.R.2d 1015.

Right to unemployment compensation or social security benefits of one working on his own projects or activities. 65 A.L.R.2d 1182.

Harassment or garnishment by employee's creditor as constituting misconduct connected with employment so as to disqualify employee from unemployment compensation. 86 A.L.R.2d 1013.

Severance payments as affecting right to unemployment compensation. 93 A.L.R.2d 1319.

Failure or delay with respect to filing or reporting requirements as ground for denial of unemployment compensation benefits. 97 A.L.R.2d 752.

Insurance agents or salesmen as within coverage of social security or unemployment compensation acts. 39 A.L.R.3d 872.

Right to unemployment compensation as affected by receipt of pension. 56 A.L.R.3d 520.

Right to unemployment compensation as affected by receipt of Social Security benefits. 56 A.L.R.3d 552.

Eligibility of strikers to obtain public assistance. 57 A.L.R.3d 1303.

Construction of phrase "establishment" or "factory, establishment, or other premises" within unemployment compensation statute rendering employee ineligible during labor dispute or strike at such location. 60 A.L.R.3d 11.

Construction of phrase "stoppage of work" in statutory provision denying unemployment compensation benefits during stoppage resulting from labor dispute. 61 A.L.R.3d 693.

Unemployment compensation: eligibility of participants in sympathy strike or slowdown. 61 A.L.R.3d 746.

What constitutes participation or direct interest in, or financing of, labor dispute or strike within disqualification provisions of unemployment compensation acts. 62 A.L.R.3d 314.

Refusal of nonstriking employee to cross picket line as justifying denial of unemployment compensation benefits. 62 A.L.R.3d 380.

Unemployment compensation: application of labor dispute disqualification for benefits to locked out employee. 62 A.L.R.3d 437.

General principles pertaining to statutory disqualification for unemployment compensation benefits because of strike or labor dispute. 63 A.L.R.3d 88.

Unemployment compensation: harassment or other mistreatment by employer or supervisor as "good cause" justifying abandonment of employment. 76 A.L.R.3d 1089.

Unemployment compensation: eligibility as affected by claimant's insistence upon conditions not common or customary to particular employment. 88 A.L.R.3d 1353.

Unemployment compensation: eligibility as affected by claimant's refusal to accept employment at compensation less than that of previous job. 94 A.L.R.3d 63.

Right to unemployment compensation as affected by claimant's receipt of holiday pay. 3 A.L.R.4th 557.

Leaving or refusing employment for religious reasons as barring unemployment compensation. 12 A.L.R.4th 611.

Unemployment compensation as affected by vacation or payment in lieu thereof. 14 A.L.R.4th 1175.

Eligibility for unemployment compensation as affected by voluntary resignation because of change of location of residence. 21 A.L.R.4th 317.

Unemployment compensation: harassment or other mistreatment by co-worker as "good cause" justifying abandonment of employment. 40 A.L.R.4th 304.

Alcoholism or intoxication as ground for discharge justifying denial of unemployment compensation. 64 A.L.R.4th 1151.

Unemployment compensation: eligibility as affected by claimant's refusal to work at particular times or on particular shifts for domestic or family reasons. 2 A.L.R.5th 475.

Eligibility for unemployment compensation as affected by claimant's voluntary separation or refusal to work alleging that the work is illegal or immoral. 41 A.L.R.5th 123.

Unemployment compensation: Leaving employment in pursuit of education or to attend training as affecting right to unemployment compensation. 47 A.L.R.5th 775.

Leaving employment or unavailability for particular job or duties because of sickness or disability, as affecting right to unemployment compensation. 68 A.L.R.5th 13.

Eligibility for unemployment compensation of employee who retires voluntarily. 75 A.L.R.5th 339.

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation §§ 1 et seq.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 279, 280.

Practice References. Employee Rights Litigation: Pleading and Practice (Matthew Bender).

Labor and Employment Law (Matthew Bender).

Shawe and Rosenthal, Employment Law Deskbook (Matthew Bender).

Emerging Issues Analysis: Wages, Unemployment Compensation, Workers' Compensation, and Disability Payments Exemptions (LexisNexis).

§ 71-5-3. Public policy.

As a guide to the interpretation and application of this chapter, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden, which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.

SOURCES: Codes, 1942, § 7369; Laws, 1936, ch. 176; Laws, 1936, 1st Ex. ch. 3.

JUDICIAL DECISIONS

1. In general.
2. Involuntary unemployment.

1. In general.

An unemployment compensation claimant was not entitled to benefits since excessive garnishments upon his wages constituted "misconduct" connected with his work under § 71-5-513(A)(2), in accordance with the public policy stated in § 71-5-3, the implementation of which is accomplished through contributions of all covered employers into the state employment fund pursuant to §§ 71-5-111 and 71-5-351. Mississippi Emp. Sec. Comm'n v. Borden, Inc., 451 So. 2d 222 (Miss. 1984).

A claimant who voluntarily left her employment as a cook in a restaurant was entitled to benefits where her work hours had been reduced by her employer approximately 50 percent, below the cost of hiring an individual to care for her children while she worked. Tate v. Mississippi Emp. Sec. Comm'n, 407 So. 2d 109 (Miss. 1981).

An employee was not entitled to unemployment compensation benefits where he admitted that he had quit because in his opinion the volume of his employer's work had not been sufficient for his satisfaction. Mississippi Emp. Sec. Comm'n v. Benson, 401 So. 2d 1303 (Miss. 1981).

The unemployment compensation law does not infringe any of the sovereign powers retained by the state and recited in the state constitution. Tatum v. Wheeless, 180 Miss. 800, 178 So. 95 (1938).

The unemployment compensation law provides for a trust fund, to be withheld from the state treasury, and hence does not violate or come within the state constitution governing the passage and duration of appropriation laws. Tatum v. Wheeless, 180 Miss. 800, 178 So. 95 (1938).

The unemployment compensation law does not violate the state constitution prohibiting appropriation bills which do not fix the maximum sum to be drawn from the treasury; the fund provided for being a trust fund, and not a fund to be placed in the state treasury, nor a fund for operating the state government. Tatum v. Wheeless, 180 Miss. 800, 178 So. 95 (1938).

2. Involuntary unemployment.

Section 71-5-513(A)(4), which disqualifies an unemployed worker from receiving unemployment compensation benefits when the unemployment is "due to a stoppage of work which exists because of a labor dispute," only applies to the period that the employee is out because of a stoppage of work due to a labor dispute in which the employee chose to leave the job; it has no application to the period beginning when the employee returns to work in good faith only to find that the employer has replaced him or her solely because of the labor dispute, since the employee is then out of work because of something over which he or she has no control. Mississippi Emp. Sec. Comm'n v. Sanderson Plumbing Prod., Inc., 604 So. 2d 215 (Miss. 1992).

The voluntary retirement of an employee who remained available for suitable work disqualified her for unemployment benefits, even though the retirement was induced by the fact that the retirement benefits far exceeded her earnings from the 2 hours per week that she was permitted to work, where the employee had worked 2 to 4 hours per week for several years, and though she was told that her hours might be cut back, she was never told that they were going to be cut; since there was no change in the employee's employment status, there was no evidence that any good cause factor played a role in her decision to relinquish her employment. Mississippi Emp. Sec. Comm'n v. Gaines, 580 So. 2d 1230 (Miss. 1991).

In an action by an employer against the Mississippi Employment Security Commission (now Department of Employment Security) challenging a ruling that employees were entitled to unemployment benefits as the result of an unjustified lockout by the employer, the circuit court erred in reversing the decision of the Commission where there was substantial evidence to support the finding that the lockout was occasioned solely by the employer and was without justification and that the employees were ready and willing to continue working. Mississippi Emp. Sec. Comm'n v. Georgia-Pacific Corp., 394 So. 2d 299 (Miss. 1981).

The benefits of the unemployment compensation law are for the use of persons unemployed through no fault of their own; to be eligible for benefits under the law, the unemployment must be involuntary. Mills v. Mississippi Emp. Sec. Comm'n, 228 Miss. 789, 89 So. 2d 727, 56 A.L.R.2d 1010 (1956).

Denial to a union member benefits under the unemployment compensation law because of his refusal to accept nonunion employment is not a denial of property right in violation of the due process and equal protection clauses of the Constitutions of the United States and the State of Mississippi. Mills v. Mississippi Emp. Sec. Comm'n, 228 Miss. 789, 89 So. 2d 727, 56 A.L.R.2d 1010 (1956).

RESEARCH REFERENCES

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation § 5.

§ 71-5-5. Suspension under federal conditions [Repealed effective July 1, 2014].

The Legislature finds and declares that the existence and continued operation of a federal tax upon employers, against which some portion of the contributions required under this chapter may be credited, will protect Mississippi employers from undue disadvantages in their competition with employers in other states. If at any time, upon a formal complaint to the Governor, he shall find that Title IX of the Social Security Act has been amended or repealed by Congress or has been held unconstitutional by the Supreme Court of the United States, and that, as a result thereof, the provisions of this chapter requiring Mississippi employers to pay contributions will subject them to a serious competitive disadvantage in relation to employers in other states, he shall publish such findings and proclaim that the operation of the provisions of this chapter requiring the payment of contributions and benefits shall be suspended for a period of not more than six (6) months. The Department of Employment Security shall thereupon requisition from the Unemployment Trust Fund all monies therein standing to its credit, and shall direct the State Treasurer to deposit such monies, together with any other monies in the Unemployment Compensation Fund, as a special fund in any banks or public depositories in this state in which general funds of the state may be deposited.

In all other cases, and unless the Governor shall issue such proclamation, this chapter shall remain in full force and effect.

If within the aforesaid six-month period the Governor shall find that other federal legislation has been enacted which avoids the competitive disadvantage herein described, he shall forthwith publicly so proclaim, and upon the date of such proclamation, the provisions of this chapter requiring the payment of contributions and benefits shall again become fully operative as of the date of such suspension with the same effect as if such suspension had not occurred. If within such six-month period no such other federal legislation is enacted or the Legislature of this state has not otherwise prescribed, the Department of Employment Security shall, under regulations prescribed by it, refund, without interest, to each employer by whom contributions have been paid his pro rata share of the total contributions paid under this chapter. Any interest or earnings of the fund shall be available to the Department of Employment Security to pay for the costs of making such refunds. When the Department of Employment Security shall have executed the duties herein prescribed and performed such other acts as are incidental to the termination of its duties under this chapter, the Governor shall by public proclamation declare that the provisions of this chapter, in their entirety, shall cease to be operative.

SOURCES: Codes, 1942, § 7370; Laws, 1936, 1st Ex. ch. 3; Laws, 2004, ch. 572, § 8; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 8; reenacted and amended, Laws, 2010, ch. 559, § 8, eff from and after July 1, 2010; reenacted without change, Laws, 2011, ch. 471, § 8, eff from and after July 1, 2011.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, and as amended by Laws of 2011, ch. 471, § 59, provides:

"SECTION 60. This act shall stand repealed on July 1, 2014."

Amendment Notes — The 2010 amendment twice substituted "six-month period" for "six-months' period" in the second paragraph.

The 2011 amendment reenacted the section without change.

Federal Aspects — Social Security Act generally, see 42 USCS §§ 301 et seq.

Title IX of the Social Security Act, see 42 USCS §§ 1101 et seq.

JUDICIAL DECISIONS

1. In general.

The unemployment compensation law authorizing its suspension for not more than six months if the governor finds that the Federal Social Security Act has been amended or repealed or declared unconstitutional by the Federal Supreme Court, thereby subjecting Mississippi employers to competitive disadvantage, is not objectionable as delegating legislative functions. Tatum v. Wheeless, 180 Miss. 800, 178 So. 95 (1938).

RESEARCH REFERENCES

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation § 12.

CJS. 81 C.J.S., Social Security and Public Welfare § 286.

§ 71-5-7. Suspension under state conditions.

If at any time the provisions of this chapter requiring the payment of contributions and benefits shall be held invalid under the constitution of this state by the supreme court of this state or invalid under the United States

Constitution by the Supreme Court of the United States, the commission shall forthwith requisition from the unemployment trust fund all moneys therein standing to the credit of the commission, and shall direct the state treasurer to deposit such moneys, together with any other moneys in the unemployment compensation fund, in any banks or public depositories in this state in which general funds of the state may be deposited. If within six (6) months after the date of such decision the legislature of this state enacts a new unemployment compensation law, such moneys shall be paid into the unemployment compensation fund established thereunder. If within such six-month period the legislature of this state has not enacted a new unemployment compensation law, the commission shall, under regulations prescribed by it, refund, without interest, to each employer by whom contributions have been paid, his pro rata share of the total contributions paid under this chapter. Any interest or earnings of the fund shall be available to the commission to pay for the costs of making such refunds. The provisions of this chapter, so far as necessary to the execution by the commission of the duties prescribed in this section and to the performance of such other acts as are incidental to the termination of its duties under this chapter, shall remain in full force and effect until the completion thereof.

SOURCES: Codes, 1942, § 7371; Laws, 1936, 1st Ex. ch. 3.

JUDICIAL DECISIONS

1. In general.
This provision does not make an unconstitutional delegation of legislative power. Tatum v. Wheeless, 180 Miss. 800, 178 So. 95 (1938).

RESEARCH REFERENCES

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation §§ 11 et seq.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 286 et seq.

§ 71-5-9. Refunds upon termination.

Refunds provided under Sections 71-5-5 and 71-5-7 shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of moneys in their custody.

SOURCES: Codes, 1942, § 7372; Laws, 1936, 1st Ex. ch. 3.

§ 71-5-11. Definitions [Repealed effective July 1, 2014].

As used in this chapter, unless the context clearly requires otherwise:

A. "Base period" means the first four (4) of the last five (5) completed calendar quarters immediately preceding the first day of an individual's benefit year.

B. "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to his unemployment.

C. "Benefit year" with respect to any individual means the period beginning with the first day of the first week with respect to which he first files a valid claim for benefits, and ending with the day preceding the same day of the same month in the next calendar year; and, thereafter, the period beginning with the first day of the first week with respect to which he next files his valid claim for benefits, and ending with the day preceding the same day of the same month in the next calendar year. Any claim for benefits made in accordance with Section 71-5-515 shall be deemed to be a "valid claim" for purposes of this subsection if the individual has been paid the wages for insured work required under Section 71-5-511(e).

D. "Contributions" means the money payments to the State Unemployment Compensation Fund required by this chapter.

E. "Calendar quarter" means the period of three (3) consecutive calendar months ending on March 31, June 30, September 30, or December 31.

F. "Department" or "commission" means the Mississippi Department of Employment Security, Office of the Governor.

G. "Executive director" means the Executive Director of the Mississippi Department of Employment Security, Office of the Governor, appointed under Section 71-5-107.

H. "Employing unit" means this state or another state or any instrumentalities or any political subdivisions thereof or any of their instrumentalities or any instrumentality of more than one (1) of the foregoing or any instrumentality of any of the foregoing and one or more other states or political subdivisions, any Indian tribe as defined in Section 3306(u) of the Federal Unemployment Tax Act (FUTA), which includes any subdivision, subsidiary or business enterprise wholly owned by such Indian tribe, any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or had in its employ one or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains two (2) or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the work. All individuals performing services in the employ of an elected fee-paid county official, other than those related by blood or marriage within the third degree computed by the rule of the civil law to such fee-paid county official, shall be deemed to be employed by such county as the employing unit for all the purposes of this chapter. For purposes of defining an "employing unit" which shall pay contributions on remuneration paid to individuals, if two (2) or more related corporations concurrently employ the same individual and compensate such individual through a common paymaster which is one (1) of such corporations, then each such corporation shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual such amounts actually disbursed to such individual by another of such corporations.

I. "Employer" means:

(1) Any employing unit which,

(a) In any calendar quarter in either the current or preceding calendar year paid for service in employment wages of One Thousand Five Hundred Dollars ($1,500.00) or more, except as provided in paragraph (9) of this subsection, or

(b) For some portion of a day in each of twenty (20) different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year had in employment at least one (1) individual (irrespective of whether the same individual was in employment in each such day), except as provided in paragraph (9) of this subsection;

(2) Any employing unit for which service in employment, as defined in subsection J(3) of this section, is performed;

(3) Any employing unit for which service in employment, as defined in subsection J(4) of this section, is performed;

(4)(a) Any employing unit for which agricultural labor, as defined in subsection J(6) of this section, is performed;

(b) Any employing unit for which domestic service in employment, as defined in subsection J(7) of this section, is performed;

(5) Any individual or employing unit which acquired the organization, trade, business, or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this chapter;

(6) Any individual or employing unit which acquired its organization, trade, business, or substantially all the assets thereof, from another employing unit, if the employment record of the acquiring individual or employing unit subsequent to such acquisition, together with the employment record of the acquired organization, trade, or business prior to such acquisition, both within the same calendar year, would be sufficient to constitute an employing unit as an employer subject to this chapter under paragraph (1) or (3) of this subsection;

(7) Any employing unit which, having become an employer under paragraph (1), (3), (5) or (6) of this subsection or under any other provisions of this chapter, has not, under Section 71-5-361, ceased to be an employer subject to this chapter;

(8) For the effective period of its election pursuant to Section 71-5-361(3), any other employing unit which has elected to become subject to this chapter;

(9)(a) In determining whether or not an employing unit for which service other than domestic service is also performed is an employer under paragraph (1) or (4)(a) of this subsection, the wages earned or the employment of an employee performing domestic service, shall not be taken into account;

(b) In determining whether or not an employing unit for which service other than agricultural labor is also performed is an employer under paragraph (1) or (4)(b) of this subsection, the wages earned or the employment of an employee performing services in agricultural labor, shall not be taken into account. If an employing unit is determined an employer of agricultural labor, such employing unit shall be determined an employer for purposes of paragraph (1) of this subsection;

(10) All entities utilizing the services of any employee leasing firm shall be considered the employer of the individuals leased from the employee leasing firm. Temporary help firms shall be considered the employer of the individuals they provide to perform services for other individuals or organizations.

J. "Employment" means and includes:

(1) Any service performed, which was employment as defined in this section and, subject to the other provisions of this subsection, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(2) Services performed for remuneration for a principal:

(a) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry cleaning services;

(b) As a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, a principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operator of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

However, for purposes of this subsection, the term "employment" shall include services described in subsection J(2)(a) and (b) of this section, only if:

(i) The contract of service contemplates that substantially all of the services are to be performed personally by such individual;

(ii) The individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation); and

(iii) The services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

(3) Service performed in the employ of this state or any of its instrumentalities or any political subdivision thereof or any of its instrumentalities or any instrumentality of more than one (1) of the foregoing or

any instrumentality of any of the foregoing and one or more other states or political subdivisions or any Indian tribe as defined in Section 3306(u) of the Federal Unemployment Tax Act (FUTA), which includes any subdivision, subsidiary or business enterprise wholly owned by such Indian tribe; however, such service is excluded from "employment" as defined in the Federal Unemployment Tax Act by Section 3306(c)(7) of that act and is not excluded from "employment" under subsection J(5) of this section.

(4)(a) Services performed in the employ of a religious, charitable, educational, or other organization, but only if the service is excluded from "employment" as defined in the Federal Unemployment Tax Act, 26 USCS Section 3306(c)(8), and

(b) The organization had four (4) or more individuals in employment for some portion of a day in each of twenty (20) different weeks, whether or not such weeks were consecutive, within the current or preceding calendar year, regardless of whether they were employed at the same moment of time.

(5) For the purposes of subsection J(3) and (4) of this section, the term "employment" does not apply to service performed:

(a) In the employ of:

(i) A church or convention or association of churches; or

(ii) An organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; or

(b) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry, or by a member of a religious order in the exercise of duties required by such order; or

(c) In the employ of a governmental entity referred to in subsection J(3), if such service is performed by an individual in the exercise of duties:

(i) As an elected official;

(ii) As a member of a legislative body, or a member of the judiciary, of a state or political subdivision or a member of an Indian tribal council;

(iii) As a member of the State National Guard or Air National Guard;

(iv) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;

(v) In a position which, under or pursuant to the laws of this state or laws of an Indian tribe, is designated as:

1. A major nontenured policy-making or advisory position, or

2. A policy-making or advisory position the performance of the duties of which ordinarily does not require more than eight (8) hours per week; or

(d) In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work; or

(e) By an inmate of a custodial or penal institution; or

(f) As part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or agency of a state or political subdivision thereof or of an Indian tribe, by an individual receiving such work relief or work training, unless coverage of such service is required by federal law or regulation.

(6) Service performed by an individual in agricultural labor as defined in paragraph (15) (a) of this subsection when:

(a) Such service is performed for a person who:

(i) During any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of Twenty Thousand Dollars ($20,000.00) or more to individuals employed in agricultural labor, or

(ii) For some portion of a day in each of twenty (20) different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor ten (10) or more individuals, regardless of whether they were employed at the same moment of time.

(b) For the purposes of subsection J(6) any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader:

(i) If such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963; or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or crop dusting equipment, or any other mechanized equipment, which is provided by such crew leader; and

(ii) If such individual is not an employee of such other person within the meaning of subsection J(1).

(c) For the purpose of subsection J(6), in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under paragraph (6)(b) of this subsection:

(i) Such other person and not the crew leader shall be treated as the employer of such individual; and

(ii) Such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on his own behalf or on behalf of such other person) for the service in agricultural labor performed for such other person.

(d) For the purposes of subsection J(6) the term "crew leader" means an individual who:

(i) Furnishes individuals to perform service in agricultural labor for any other person;

(ii) Pays (either on his own behalf or on behalf of such other person) the individuals so furnished by him for the service in agricultural labor performed by them; and

(iii) Has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

(7) The term "employment" shall include domestic service in a private home, local college club or local chapter of a college fraternity or sorority performed for an employing unit which paid cash remuneration of One Thousand Dollars ($1,000.00) or more in any calendar quarter in the current or the preceding calendar year to individuals employed in such domestic service. For the purpose of this subsection, the term "employment" does not apply to service performed as a "sitter" at a hospital in the employ of an individual.

(8) An individual's entire service, performed within or both within and without this state, if:

(a) The service is localized in this state; or

(b) The service is not localized in any state but some of the service is performed in this state; and

(i) The base of operations or, if there is no base of operations, the place from which such service is directed or controlled is in this state; or

(ii) The base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(9) Services not covered under paragraph (8) of this subsection and performed entirely without this state, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this chapter if the individual performing such services is a resident of this state and the department approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this chapter.

(10) Service shall be deemed to be localized within a state if:

(a) The service is performed entirely within such state; or

(b) The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state; for example, is temporary or transitory in nature or consists of isolated transactions.

(11) The services of an individual who is a citizen of the United States, performed outside the United States (except in Canada), in the employ of an American employer (other than service which is deemed "employment" under the provisions of paragraph (8), (9) or (10) of this subsection or the parallel provisions of another state's law), if:

(a) The employer's principal place of business in the United States is located in this state; or

(b) The employer has no place of business in the United States; but

(i) The employer is an individual who is a resident of this state; or

(ii) The employer is a corporation which is organized under the laws of this state; or

(iii) The employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one (1) other state; or

(c) None of the criteria of subparagraphs (a) and (b) of this paragraph are met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state; or

(d) An "American employer," for purposes of this paragraph, means a person who is:

(i) An individual who is a resident of the United States; or

(ii) A partnership if two-thirds (⅔) or more of the partners are residents of the United States; or

(iii) A trust if all of the trustees are residents of the United States; or

(iv) A corporation organized under the laws of the United States or of any state.

(12) All services performed by an officer or member of the crew of an American vessel on or in connection with such vessel, if the operating office from which the operations of such vessel operating on navigable waters within, or within and without, the United States are ordinarily and regularly supervised, managed, directed and controlled, is within this state, notwithstanding the provisions of subsection J(8).

(13) Service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund, or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act, 26 USCS Section 3301 et seq., is required to be covered under this chapter, notwithstanding any other provisions of this subsection.

(14) Services performed by an individual for wages shall be deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the department that such individual has been and will continue to be free from control and direction over the performance of such services both under his contract of service and in fact; and the relationship of employer and employee shall be determined in accordance with the principles of the common law governing the relation of master and servant.

(15) The term "employment" shall not include:

(a) Agricultural labor, except as provided in subsection J(6) of this section. The term "agricultural labor" includes all services performed:

(i) On a farm or in a forest in the employ of any employing unit in connection with cultivating the soil, in connection with cutting, planting, deadening, marking or otherwise improving timber, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, fur-bearing animals and wildlife;

(ii) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(iii) In connection with the production or harvesting of naval stores products or any commodity defined in the Federal Agricultural Marketing Act, 12 USCS Section 1141j(g), or in connection with the raising or harvesting of mushrooms, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(iv)(A) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half (½) of the commodity with respect to which such service is performed;

(B) In the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in subitem (A), but only if such operators produced more than one-half (½) of the commodity with respect to which such service is performed;

(C) The provisions of subitems (A) and (B) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(v) On a farm operated for profit if such service is not in the course of the employer's trade or business;

(vi) As used in paragraph (15)(a) of this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(b) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in subsection J(7) of this section, or service performed as a "sitter" at a hospital in the employ of an individual.

(c) Casual labor not in the usual course of the employing unit's trade or business.

(d) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one (21) in the employ of his father or mother.

(e) Service performed in the employ of the United States government or of an instrumentality wholly owned by the United States; except that if the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation act, then to the extent permitted by Congress and from and after the date as of which such permission becomes effective, all of the provisions of this chapter shall be applicable to such instrumentalities and to services performed by employees for such instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers and employing units. If this state should not be certified under the Federal Unemployment Tax Act, 26 USCS Section 3304(c), for any year, then the payment required by such instrumentality with respect to such year shall be deemed to have been erroneously collected and shall be refunded by the department from the fund in accordance with the provisions of Section 71-5-383.

(f) Service performed in the employ of an "employer" as defined by the Railroad Unemployment Insurance Act, 45 USCS Section 351(a), or as an "employee representative" as defined by the Railroad Unemployment Insurance Act, 45 USCS Section 351(f), and service with respect to which unemployment compensation is payable under an unemployment compensation system for maritime employees, or under any other unemployment compensation system established by an act of Congress; however, the department is authorized and directed to enter into agreements with the proper agencies under such act or acts of Congress, which agreements shall become effective ten (10) days after publication thereof in the manner provided in Section 71-5-117 for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment compensation under such act or acts of Congress or who have, after acquiring potential rights to unemployment compensation under such act or acts of Congress, acquired rights to benefits under this chapter.

(g) Service performed in any calendar quarter in the employ of any organization exempt from income tax under the Internal Revenue Code, 26 USCS Section 501(a)(other than an organization described in 26 USCS Section 401(a)), or exempt from income tax under 26 USCS

Section 521 if the remuneration for such service is less than Fifty Dollars ($50.00).

(h) Service performed in the employ of a school, college, or university if such service is performed:

(i) By a student who is enrolled and is regularly attending classes at such school, college or university, or

(ii) By the spouse of such a student if such spouse is advised, at the time such spouse commences to perform such service, that

(A) The employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and

(B) Such employment will not be covered by any program of unemployment insurance.

(i) Service performed by an individual under the age of twenty-two (22) who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers.

(j) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital, as defined in subsection N of this section.

(k) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and services performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved pursuant to state law.

(*l*) Service performed by an individual as an insurance agent or as an insurance solicitor, if all such service performed by such individual is performed for remuneration solely by way of commission.

(m) Service performed by an individual under the age of eighteen (18) in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution.

(n) If the services performed during one-half (½) or more of any pay period by an employee for the employing unit employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half (½) of any such pay period by an employee for the employing unit employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection, the term "pay period" means a period (of not more than thirty-one (31) consecutive days) for which a payment of remuneration is ordinarily made to the employee by the employing unit employing him.

(o) Service performed by a barber or beautician whose work station is leased to him or her by the owner of the shop in which he or she works and who is compensated directly by the patrons he or she serves and who is free from direction and control by the lessor.

K. "Employment office" means a free public employment office or branch thereof, operated by this state or maintained as a part of the state controlled system of public employment offices.

L. "Public employment service" means the operation of a program that offers free placement and referral services to applicants and employers, including job development.

M. "Fund" means the Unemployment Compensation Fund established by this chapter, to which all contributions required and from which all benefits provided under this chapter shall be paid.

N. "Hospital" means an institution which has been licensed, certified, or approved by the State Department of Health as a hospital.

O. "Institution of higher learning," for the purposes of this section, means an educational institution which:

(1) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) Is legally authorized in this state to provide a program of education beyond high school;

(3) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation;

(4) Is a public or other nonprofit institution;

(5) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher learning for purposes of this section.

P.(1) "State" includes, in addition to the states of the United States of America, the District of Columbia, Commonwealth of Puerto Rico and the Virgin Islands.

(2) The term "United States" when used in a geographical sense includes the states, the District of Columbia, Commonwealth of Puerto Rico and the Virgin Islands.

(3) The provisions of paragraphs (1) and (2) of subsection P, as including the Virgin Islands, shall become effective on the day after the day on which the United States Secretary of Labor approves for the first time under Section 3304(a) of the Internal Revenue Code of 1954 an

unemployment compensation law submitted to the secretary by the Virgin Islands for such approval.

Q. "Unemployment."

(1) An individual shall be deemed "unemployed" in any week during which he performs no services and with respect to which no wages are payable to him, or in any week of less than full-time work if the wages payable to him with respect to such week are less than his weekly benefit amount as computed and adjusted in Section 71-5-505. The department shall prescribe regulations applicable to unemployed individuals, making such distinctions in the procedure as to total unemployment, part-total unemployment, partial unemployment of individuals attached to their regular jobs, and other forms of short-time work, as the department deems necessary.

(2) An individual's week of total unemployment shall be deemed to commence only after his registration at an employment office, except as the department may by regulation otherwise prescribe.

R.(1) "Wages" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash, except that "wages," for purposes of determining employer's coverage and payment of contributions for agricultural and domestic service means cash remuneration only. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the department; however, that the term "wages" shall not include:

(a) The amount of any payment made to, or on behalf of, an employee under a plan or system established by an employer which makes provision for his employees generally or for a class or classes of his employees (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), on account of:

(i) Retirement, or

(ii) Sickness or accident disability, or

(iii) Medical or hospitalization expenses in connection with sickness or actual disability, or

(iv) Death, provided the employee:

(A) Has not the option to receive, instead of provision for such death benefit, any part of such payment or, if such death benefit is insured, any part of the premiums (or contributions to premiums) paid by his employer, and

(B) Has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit or to receive a cash consideration in lieu of such benefit, either upon his withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his employment with such employer;

(b) Dismissal payments which the employer is not legally required to make;

(c) Payment by an employer (without deduction from the remuneration of an employee) of the tax imposed by the Internal Revenue Code, 26 USCS Section 3101;

(d) From and after January 1, 1992, the amount of any payment made to or on behalf of an employee for a "cafeteria" plan, which meets the following requirements:

(i) Qualifies under Section 125 of the Internal Revenue Code;

(ii) Covers only employees;

(iii) Covers only noncash benefits;

(iv) Does not include deferred compensation plans.

(2) [Not enacted].

S. "Week" means calendar week or such period of seven (7) consecutive days as the department may by regulation prescribe. The department may by regulation prescribe that a week shall be deemed to be in, within, or during any benefit year which includes any part of such week.

T. "Insured work" means "employment" for "employers."

U. The term "includes" and "including," when used in a definition contained in this chapter, shall not be deemed to exclude other things otherwise within the meaning of the term defined.

V. "Employee leasing arrangement" means any agreement between an employee leasing firm and a client, whereby specified client responsibilities such as payment of wages, reporting of wages for unemployment insurance purposes, payment of unemployment insurance contributions and other such administrative duties are to be performed by an employee leasing firm, on an ongoing basis.

W. "Employee leasing firm" means any entity which provides specified duties for a client company such as payment of wages, reporting of wages for unemployment insurance purposes, payment of unemployment insurance contributions and other administrative duties, in connection with the client's employees, that are directed and controlled by the client and that are providing ongoing services for the client.

X.(1) "Temporary help firm" means an entity which hires its own employees and provides those employees to other individuals or organizations to perform some service, to support or supplement the existing workforce in special situations such as employee absences, temporary skill shortages, seasonal workloads and special assignments and projects, with the expectation that the worker's position will be terminated upon the completion of the specified task or function.

(2) "Temporary employee" means an employee assigned to work for the clients of a temporary help firm.

Y. For the purposes of this chapter, the term "notice" shall include any official communication, statement or other correspondence required under the administration of this chapter, and sent by the department through the United States Postal Service or electronic or digital transfer, via modem or the Internet.

SOURCES: Codes, 1942, § 7440; Laws, 1940, ch. 295, § 13; Laws, 1948, ch. 412, § 10; Laws, 1955, Ex. Sess. ch. 93, § 2; Laws, 1971, ch. 519, § 13; Laws, 1977, ch. 497, § 1; Laws, 1978, ch. 533, § 1; Laws, 1979, ch. 311; Laws, 1981, ch. 343, § 1; Laws, 1983, ch. 371, § 1; Laws, 1985, ch. 406; Laws, 1992, ch. 339, § 1; Laws, 1993, ch. 328, § 1; Laws, 1998, ch. 331, § 1; Laws, 1998, ch. 491, § 1; Laws, 2002, ch. 562, § 1; Laws, 2004, ch. 572, § 9; Laws, 2007, ch. 606, § 3; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 9; reenacted and amended, Laws, 2011, ch. 471, § 9, eff from and after July 1, 2011.

Joint Legislative Committee Note — Section 1 of ch. 331, Laws of 1998, effective from and after July 1, 1998, amended this section. Section 1 of ch. 491, Laws of 1998, effective from and after July 2, 1998, also amended this section. As set out above, this section reflects the language of Section 1 of ch. 491, Laws of 1998, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error throughout the section. The words "subsection I" were changed to "subsection J." The Joint Committee ratified the correction at its July 13, 2009, meeting.

Editor's Note — Laws of 1977, ch. 497, § 10, provides:

"SECTION 10. In the event the provisions of P.L. 94-566, the Unemployment Compensation Amendments of 1976, which mandate unemployment insurance coverage for state and local government employees, are declared unconstitutional, the amendments, which mandate unemployment insurance coverage for state and local government employees, adopted to Sections 71-5-11, 71-5-351, 71-5-355, 71-5-357, 71-5-359, 71-5-361, 71-5-511, 71-5-513 and 71-5-541, Mississippi Code of 1972, at the 1977 Regular Session of the Legislature shall stand repealed."

Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, and as amended by Laws of 2011, ch. 471, § 59, provides:

"SECTION 60. This act shall stand repealed on July 1, 2014."

Amendment Notes — The 2011 amendment reenacted and amended the section by making minor stylistic changes.

Cross References — Administration of the comprehensive employment and training act, see § 7-1-355.

Definitions for modified rates of contributions, see § 71-5-355.

Regulations governing payment of benefits to employees of nonprofit organizations, see § 71-5-357.

Provisions relative to the obligations of state boards, state agencies, and political subdivisions under the Mississippi Unemployment Compensation Law, see § 71-5-359.

Period, election, and termination of employing unit, see § 71-5-361.

Payment of benefits, see § 71-5-501.

Benefit eligibility conditions, see § 71-5-511.

Federal Aspects — Definitions of terms in Immigration and Nationality Act, see 8 USCS § 1101.

Admission of non-immigrant laborers, see 8 USCS § 1184.

Agricultural Marketing Act, see 12 USCS §§ 1141 et seq.

Qualified trusts forming part of employer's pension, profit-sharing or stock bonus plan, see 26 USCS § 401.

Organizations exempt from federal tax, see 26 USCS § 501.

Exemption of farmers' cooperatives from tax, see 26 USCS § 521.

Federal Unemployment Tax Act, see 26 USCS §§ 3301 et seq.

Migrant and Seasonal Agricultural Worker Protection Act (successor to former Farm Labor Contractor Registration Act of 1963, 7 USCS §§ 2041 et seq), see 29 USCS §§ 1801 et seq.

Railroad Unemployment Insurance Act, see 45 USCS §§ 351 et seq.

Cafeteria plans qualifying under Section 125 of the Internal Revenue Code, see 26 USCS § 125.

JUDICIAL DECISIONS

1. In general.
2. Determination of employment status.
3. —Exercise of control.
4. —Agricultural labor.
5. Self-employed persons.

1. In general.

Employment was not a prerequisite to deducting monies earned by a person during any week in which the person received benefits, and unemployment benefits claimant's bi-weekly payments for service as a part-time alderman constituted wages under Miss Code Ann. § 71-5-11 P.(1), which wages should have been deducted from the benefits under Miss Code Ann. § 71-5-505(1). Miss. Emp. Sec. Comm'n v. Jones, 826 So. 2d 77 (Miss. 2002).

One may commit the crime of kidnapping either by secretly confining a victim or by confining or imprisoning another against his or her will regardless of whether the confinement is secret; the element of secrecy is not fundamental to a kidnapping charge. Culbert v. State, 800 So. 2d 546 (Miss. Ct. App. 2001).

A laid off employee was improperly denied unemployment compensation for the two week period following his receipt of a lump sum vacation payment since, pursuant to this section, no wages were payable to the employee, in that he had performed no services for his former employer during the two weeks; the vacation pay flowed from services rendered prior to termination of his employment. Further, an administrative rule which provided that pay received after separation from an employer was considered to be "wages," was inconsistent with the legislative definition of "unemployment," and exceeded the powers granted the Commission by § 71-5-115. Buse v. Mississippi Emp. Sec. Comm'n, 377 So. 2d 600, 14 A.L.R.4th 1171 (Miss. 1979).

The exemption of credit unions paying a privilege tax from all other taxation does not embrace contributions to the unemployment insurance fund. Mutual Credit Union v. Mississippi Emp. Sec. Comm'n, 241 Miss. 432, 131 So. 2d 444 (1961).

Contributions levied by the Mississippi Employment Security Commission (now Department of Employments Security) constitute an excise tax, and the statute authorizing the levying of the same is to be construed liberally in favor of the taxpayer and strictly against the taxing power, and all doubts are to be resolved in favor of the taxpayer. Mozingo v. Mississippi Emp. Sec. Comm'n, 224 Miss. 375, 80 So. 2d 75 (1955).

In construing this statute it must be assumed that the legislature employed the wards of the statute in their usual and ordinary sense, unless it clearly appeared that they were intended to be used otherwise and to convey a different meaning. Texas Co. v. Wheeless, 185 Miss. 799, 187 So. 880 (1939).

Since the contributions imposed by the statute on an employer are an excise tax, every doubt as to its application must be resolved in favor of the alleged employer and against the taxing power. Texas Co. v. Wheeless, 185 Miss. 799, 187 So. 880 (1939).

2. Determination of employment status.

Trial court properly overturned an award of unemployment benefits to a claimant because the claimant, a satellite installer, acted as an independent contractor under Miss. Code Ann. § 71-5-11(J)(14). The satellite company did not exercise any control over the installation of the satellite dishes; it merely took the work orders. Miss. Dep't of Empl. Sec. v. Harbin, 11 So. 3d 137 (Miss. Ct. App. 2009).

Caretaker who provided hygienic, feeding, and sitting services to decedent before he died and was hired and paid by the decedent's family members was an employee and was entitled to unemployment benefits upon decedent's death. Estate of

Dulaney v. Miss. Emp. Sec. Comm'n, 805 So. 2d 643 (Miss. Ct. App. 2002).

Printing company retained its "eligible employer" status and was entitled to lower rates than those charged to "newly subject employer" when it switched to new "employee leasing firm" to handle various payroll services for it, including reporting of wages and payment of unemployment contributions; although company had previously utilized three different "employee leasing firms," company had complete control over its employees from date of its founding ten years earlier. Clark Printing Co. v. Mississippi Emp. Sec. Comm'n, 681 So. 2d 1328 (Miss. 1996).

A health care personnel service was not an "employer" liable for contributions under the Mississippi Employment Security Act, where it was engaged in the business of providing health care personnel to hospitals and to individuals on an as-needed basis, the customer paid the service an hourly fee for the work the health care personnel actually performed, and the service paid its health care personnel at an hourly rate. Mississippi Emp. Sec. Comm'n v. Total Care, Inc., 586 So. 2d 834 (Miss. 1991).

Employees whose jobs were eliminated by technological advances, and who were given the options of terminating employment with a lump sum payment of money, transferring to another job with the same employer in an office either 218 miles, 90 miles, or 81 miles, from the employees' homes, or taking a technological leave of absence, were "unemployed" within the plain meaning of §§ 71-5-11(O) and 71-5-513. Curtis v. Mississippi Emp. Sec. Comm'n, 451 So. 2d 736 (Miss. 1984).

A worker was unemployed within the meaning of § 71-5-11(0)(1), for purposes of determining his eligibility for benefits under the Employment Security Law, where his weekly wages amounted to less than his weekly benefit, even though he was in fact employed as a school bus driver, working for approximately one and a half hours each morning and each afternoon. McLaurin v. Mississippi Emp. Sec. Comm'n, 435 So. 2d 1170 (Miss. 1983).

The owner and operator of a barber shop cannot escape liability for unemployment security tax by entering into agreements with barbers, terminable upon notice, whereby each leased a chair upon terms which left their earnings substantially the same as before. Mississippi Emp. Sec. Comm'n v. Logan, 248 Miss. 595, 159 So. 2d 802 (1964).

A real estate broker is not, for unemployment compensation purposes, the employer of salesmen working out of his office as independent contractors compensated by a share in commissions. Mississippi Emp. Sec. Comm'n v. Scott, 242 Miss. 514, 137 So. 2d 164 (1962).

In determining whether an employer and employee relationship exists for the purposes of unemployment compensation contributions, both the contract of service and the facts of operation thereunder must be considered. Mozingo v. Mississippi Emp. Sec. Comm'n, 224 Miss. 375, 80 So. 2d 75 (1955).

The legislative intent of the test for the employer-employee relationship under this statute is obtained by an application of the principles of the common law of master and servant. Mississippi Emp. Sec. Comm'n v. Heidelberg Hotel Co., 211 Miss. 104, 51 So. 2d 47 (1951).

Janitor employed by bank for about one hour each weekday at designated monthly wage, the bank furnishing all his implements and supplies, was an employee and not an independent contractor within the meaning of the unemployment compensation law, notwithstanding that he did his work at the bank other than during banking hours and without supervision, and that during the balance of the day he was employed by the bank's attorney as a member of the latter's household staff. First Nat'l Bank v. Mississippi Unemployment Comp. Comm'n, 199 Miss. 97, 23 So. 2d 534 (1945).

Even where skill is required, if occupation is one which is ordinarily considered as a function of the regular members of the household or an incident of the business establishment of the employer, there is an inference that the actor is a servant and not an independent contractor. First Nat'l Bank v. Mississippi Unemployment Comp. Comm'n, 199 Miss. 97, 23 So. 2d 534 (1945).

A servant regularly employed to labor for wages upon the domestic or business premises of his employer with the tools and equipment of the employer, although arrayed in the livery of an independent contractor, is still a servant. First Nat'l Bank v. Mississippi Unemployment Comp. Comm'n, 199 Miss. 97, 23 So. 2d 534 (1945).

A similar contract shows that the distributor was a capitalist and employer in each instance, instead of a hired man, so as to preclude liability against the oil company for contributions. AMOCO v. Wheeless, 185 Miss. 521, 187 So. 889 (1939).

In view of the language used in paragraphs, h, i, and n, under this section [Code 1942, § 7440], it is clear from the whole contract that the service which is to be performed for wages in the ordinary sense was to be under a contract of hire, and that if the compensation was to be paid in salaries or commissions it was likewise to be payable for the services rendered under a contract of hire. Texas Co. v. Wheeless, 185 Miss. 799, 187 So. 880 (1939).

A contract between an oil company and a distributor or consignee of its petroleum products at wholesale was not a "contract for hire" within the purview of the statute, so as to render such oil company liable for contributions under the statute as an employer of such distributor and the latter's employees, where all of the provisions of the contract were such as would be implied by law, in the absence of express stipulations, in any agreement whereby one sells the goods of another as a consignee, factor, commission merchant, or otherwise on commission, and the contract did not show the existence of the relationship of master and servant, and particularly in view of the fact that most of the distributors of petroleum products were of a class of capitalists and investors engaged in other businesses, whom the statute was not designed to help. Texas Co. v. Wheeless, 185 Miss. 799, 187 So. 880 (1939).

The meaning of "contract for hire" is the criterion in determining "employment" under the statute. Texas Co. v. Wheeless, 185 Miss. 799, 187 So. 880 (1939).

3. —Exercise of control.

Under Miss. Code Ann. § 71-5-11(J)(14) and the applicable factors, a worker doing product demonstrations was not an employee of a company where the company provided no tools, materials, or supplies, the worker was paid by a manufacturer or retailer, and the information relating to the job was provided by the manufacturer. Miss. Dep't of Empl. Sec. v. Product Connections, LLC, 963 So. 2d 1185 (Miss. Ct. App. 2007).

Printing company retained its "eligible employer" status and was entitled to lower rates than those charged to "newly subject employer" when it switched to new "employee leasing firm" to handle various payroll services for it, including reporting of wages and payment of unemployment contributions; although company had previously utilized three different "employee leasing firms," company had complete control over its employees from date of its founding ten years earlier. Clark Printing Co. v. Mississippi Emp. Sec. Comm'n, 681 So. 2d 1328 (Miss. 1996).

A medical placement service for nurses, nurses' aides, and sitters was not an "employer" within the meaning of the Mississippi Employment Security Law since the service did not exercise sufficient direction and control over the workers to establish an employer/employee relationship. Mississippi Emp. Sec. Comm'n v. PDN, Inc., 586 So. 2d 838 (Miss. 1991).

Where a salesman of a confection distributor owned his own trucks and equipment, hired his own salesmen and helpers, fixed their hours of work and vacation time, and was in complete control of the operations of his business free from any direction of the distributor, and such salesmen were not covered by workmen's compensation and were not reported for social security purposes by the distributor, such salesmen were not employees of the distributor within the statute levying an assessment of contribution. Mozingo v. Mississippi Emp. Sec. Comm'n, 224 Miss. 375, 80 So. 2d 75 (1955).

Where a hotel hired an orchestra under a contract which designated the hotel as an employer and the musicians as employees, but the hotel exercised no control over the operation of the orchestra, the musicians were not employees of the hotel and the hotel was not liable for the state unemployment taxes. Mississippi Emp.

Sec. Comm'n v. Heidelberg Hotel Co., 211 Miss. 104, 51 So. 2d 47 (1951).

This section [Code 1942, § 7440], defining an employer subject to the provisions of the unemployment compensation law (subsection h(1) and (4)), as applied to a corporation which did not employ the minimum of 8 persons required by the law but which was controlled by another corporation owning a majority of the stock, both corporations being controlled by the same interests and both corporations, together, having more than 8 nonexempt employees, did not violate the equal protection clauses of the state and federal constitutions. Warren Brokerage Co. v. Mississippi Unemployment Comp. Comm'n, 194 Miss. 855, 13 So. 2d 227 (1943), Followed in Warren Credit Corp. v. Mississippi Unemployment Comp. Commission, 13 So. 2d 228.

Where defendant, who operated both a drug business employing six persons and a dairy business employing four persons, in order to evade liability for benefits under the unemployment compensation law deeded the dairy to his wife, who used the proceeds therefrom in remodeling and furnishing their home, but defendant retained control thereof, both businesses were under common control of defendant and therefore subject to the law. Mississippi Unemployment Comp. Comm'n v. Avent, 192 Miss. 94, 4 So. 2d 684 (1941).

Construction of this statute, in ascertaining the number of employees, to apply to both a drug store operated by defendant and a dairy business which he had deeded to his wife, did not deprive him of his property without due process of law or deny him equal protection of the laws in violation of the state and federal constitutions where, although the wife was the nominal owner of the dairy, the facts showed that both businesses were under the control and domination of defendant. Mississippi Unemployment Comp. Comm'n v. Avent, 192 Miss. 94, 4 So. 2d 684 (1941).

"Contract of hire" within the meaning of the statute embraces, and was intended to embrace, only those who are under the control and direction of the alleged employer in the performance of the details of their work and in the use of the means employed, being the common law meaning of the term "employee" under a contract of hire. Texas Co. v. Wheeless, 185 Miss. 799, 187 So. 880 (1939).

4. —Agricultural labor.

Work performed by farming corporation's employees in land clearing operations on land owned or leased by the corporation for the production of soybeans was exempt agricultural labor within the meaning of this section [Code 1942, § 7440]. Mississippi Emp. Sec. Comm'n v. Ballard Co., 228 So. 2d 361 (Miss. 1969).

Land clearing operations engaged in by employees of an agricultural corporation upon lands owned by others and not leased to the corporation did not constitute exempt agricultural labor. Mississippi Emp. Sec. Comm'n v. Ballard Co., 228 So. 2d 361 (Miss. 1969).

The delivery of live chickens to a corporation engaged in killing, cleaning, and processing poultry for marketing at retail constitutes a delivery to a terminal market for distribution for consumption within the provision of (i)(6)(A)(iv) of this section [Code 1942, § 7440]. Mississippi Emp. Sec. Comm'n v. B.C. Rogers & Sons, 193 So. 2d 564 (Miss. 1967).

Employees of a corporation working only at the job of processing chickens for the consumer market are not engaged in agricultural labor, and their services are not exempt under the provisions of (i)(6)(A)(iv) of this section [Code 1942, § 7440]; for their services are performed after the delivery of live chickens to a terminal market to be there processed and prepared and distributed to retail outlets for sale to the consuming public. Mississippi Emp. Sec. Comm'n v. B.C. Rogers & Sons, 193 So. 2d 564 (Miss. 1967).

5. Self-employed persons.

The purpose of this statute is not to protect persons self-employed, and only wage earners can become eligible for unemployment compensation benefits. Mississippi Emp. Sec. Comm'n v. Medlin, 252 Miss. 146, 171 So. 2d 496 (1965).

Wages for "personal services" as defined in this section [Code 1942, § 7440] is intended to mean personal services performed for an employer and does not include all services personally rendered by the claimant as a self-employed person. Mississippi Emp. Sec. Comm'n v. Medlin, 252 Miss. 146, 171 So. 2d 496 (1965).

ATTORNEY GENERAL OPINIONS

The position of municipal election commissioner falls within Section 71-5-11(I); therefore, a city is not responsible for any portion of the unemployment benefits that may be due one serving as municipal election commissioner. Lawrence, June 2, 1995, A.G. Op. #95-0203.

RESEARCH REFERENCES

ALR. Newspaper boy or other news carrier as independent contractor or employee for purposes of respondeat superior. 55 A.L.R.3d 1216.

Construction of phrase "establishment" or "factory, establishment, or other premises" within unemployment compensation statute rendering employee ineligible during labor dispute or strike at such location. 60 A.L.R.3d 11.

Part-time or intermittent workers as covered by or as eligible for benefits under state unemployment compensation act. 95 A.L.R.3d 891.

Unemployment compensation: trucker as employee or independent contractor. 2 A.L.R.4th 1219.

Right to unemployment compensation or social security benefits of teacher or other school employee. 33 A.L.R.5th 643.

What constitutes "agricultural" or "farm" labor within social-security or unemployment-compensation acts. 60 A.L.R.5th 459.

Validity and construction of domestic service provisions of fair labor standards act (29 U.S.C.A. §§ 201 et seq.), 165 A.L.R. Fed. 163.

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation §§ 18 et seq.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 298 et seq.

Practice References. Employee Rights Litigation: Pleading and Practice (Matthew Bender).

Labor and Employment Law (Matthew Bender).

Shawe and Rosenthal, Employment Law Deskbook (Matthew Bender).

Emerging Issues Analysis: Wages, Unemployment Compensation, Workers' Compensation, and Disability Payment Exemptions (LexisNexis).

§ 71-5-13. Reciprocal arrangements.

(1) The commission is hereby authorized to enter into arrangements with the appropriate agencies of other states or the federal government, whereby individuals performing services in this and other states for a single employing unit under circumstances not specifically provided for in Section 71-5-11, subsection J, or under similar provisions in the unemployment compensation laws of such other states, shall be deemed to be engaged in employment performed entirely within this state or within one (1) of such other states and whereby potential rights to benefits accumulated under the unemployment compensation laws of one or more states or under such a law of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the commission finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund.

(2) The commission is also authorized to enter into arrangements with the appropriate agencies of other states or of the federal government

(a) whereby wages or services upon the basis of which an individual may become entitled to benefits under the unemployment compensation law of another state or of the federal government shall be deemed to be wages for employment by employers for the purposes of Sections 71-5-501 through 71-5-507 and Section 71-5-511(e), provided such other state agency or agency of the federal government has agreed to reimburse the fund for such portion of benefits paid under this chapter upon the basis of such wages or services as the commission finds will be fair and reasonable as to all affected interests and

(b) whereby the commission will reimburse other state or federal agencies charged with the administration of unemployment compensation laws with such reasonable portion of benefits paid under the law of any such other states or of the federal government, upon the basis of employment or wages for employment by employers, as the commission finds will be fair and reasonable as to all affected interests. Reimbursements so payable shall be deemed to be benefits for the purposes of Sections 71-5-451 through 71-5-459. The commission is hereby authorized to make to other state or federal agencies, and receive from such other state or federal agencies, reimbursements from or to the fund, in accordance with arrangements pursuant to this section.

(3) The commission is also authorized, in its discretion, to enter into or cooperate in arrangements with any federal agency whereby the facilities and services of the personnel of the commission may be utilized for the taking of claims and the payment of unemployment compensation or allowances under any federal law enacted for the benefit of discharged members of the armed forces.

(4) The commission shall participate in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under this chapter with his wages and employment covered under the unemployment compensation laws of other states which are approved by the United States Secretary of Labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations and which include provisions for

(a) applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under two (2) or more state unemployment compensation laws, and

(b) avoiding the duplicate use of wages and employment by reason of such combining.

SOURCES: Codes, 1942, § 7441; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 4; Laws, 1971, ch. 519, § 14, eff from and after January 1, 1972.

RESEARCH REFERENCES

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation § 30.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 471, 472.

§ 71-5-15. Non-liability of state.

Benefits shall be deemed to be due and payable under this chapter only to the extent provided in this chapter and to the extent that moneys are available therefor to the credit of the unemployment compensation fund; and neither the state nor the commission shall be liable for any amount in excess of such sums.

SOURCES: Codes, 1942, § 7439; Laws, 1936, ch. 176.

§ 71-5-17. Representation in court.

(1) In any civil action to enforce the provisions of this chapter, the commission, the board of review, and the state may be represented by any qualified attorney who is employed by the commission and is designated by it for this purpose or, at the commission's request, by the attorney general.

(2) All criminal actions for violation of any provision of this chapter, or of any rules and regulations issued pursuant thereto, shall be prosecuted by the attorney general of the state or, at his request and under his direction, by the prosecuting attorney of any county in which the employer has a place of business or the violator resides.

SOURCES: Codes, 1942, § 7438; Laws, 1936, ch. 176; Laws, 1938, ch. 147.

Cross References — Duty of attorney general to act as counsel in suits touching official duty or trust of state officers, see § 7-5-39.

§ 71-5-19. Penalties; when overpayment of benefits occurs; reciprocity with other states in collection of overpayment [Repealed effective July 1, 2014].

(1) Whoever makes a false statement or representation knowing it to be false, or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this chapter or under an employment security law of any other state, of the federal government or of a foreign government, either for himself or for any other person, shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), or by imprisonment for not longer than thirty (30) days, or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense.

(2) Any employing unit, any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto, or to avoid or reduce any contribution or other payment required from any employing unit under this chapter, or who willfully fails or refuses to make any such contribution or other payment, or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be punished by a fine of not less

than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00), or by imprisonment for not longer than sixty (60) days, or by both such fine and imprisonment; and each such false statement, or representation, or failure to disclose a material fact, and each day of such failure or refusal shall constitute a separate offense. In lieu of such fine and imprisonment, the employing unit or representative, or both employing unit and representative, if such representative is an employing unit in this state and is found to be a party to such violation, shall not be eligible for a contributions rate of less than five and four-tenths percent (5.4%) for the tax year in which such violation is discovered by the department and for the next two (2) succeeding tax years.

(3) Any person who shall willfully violate any provision of this chapter or any other rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00), or by imprisonment for not longer than sixty (60) days, or by both such fine and imprisonment; and each day such violation continues shall be deemed to be a separate offense. In lieu of such fine and imprisonment, the employing unit or representative, or both employing unit and representative, if such representative is an employing unit in this state and is found to be a party to such violation, shall not be eligible for a contributions rate of less than five and four-tenths percent (5.4%) for the tax year in which the violation is discovered by the department and for the next two (2) succeeding tax years.

(4)(a) An overpayment of benefits occurs when a person receives benefits under this chapter:

(i) While any conditions for the receipt of benefits imposed by this chapter were not fulfilled in his case;

(ii) While he was disqualified from receiving benefits; or

(iii) When such person receives benefits and is later found to be disqualified or ineligible for any reason, including, but not limited to, a redetermination or reversal by the department or the courts of a previous decision to award such person benefits.

(b) Any person receiving an overpayment shall, in the discretion of the department, be liable to have such sum deducted from any future benefits payable to him under this chapter and shall be liable to repay to the department for the Unemployment Compensation Fund a sum equal to the overpayment amount so received by him; and such sum shall be collectible in the manner provided in Sections 71-5-363 through 71-5-383 for the collection of past-due contributions.

(c) Any such judgment against such person for collection of such overpayment shall be in the form of a seven-year renewable lien. Unless action be brought thereon prior to expiration of the lien, the department must refile the notice of the lien prior to its expiration at the end of seven (7) years. There shall be no limit upon the number of times the department may refile notices of liens for collection of overpayments.

(5) The department, by agreement with another state or the United States, as provided under Section 303(g) of the Social Security Act, may recover any overpayment of benefits paid to any individual under the laws of this state or of another state or under an unemployment benefit program of the United States. Any overpayments subject to this subsection may be deducted from any future benefits payable to the individual under the laws of this state or of another state or under an unemployment program of the United States.

SOURCES: Codes, 1942, § 7437; Laws, 1936, ch. 176; Laws, 1938, ch. 147; Laws, 1952, ch. 383, § 3; Laws, 1977, ch. 351; Laws, 1985, ch. 414; Laws, 1986, ch. 331; Laws, 1992, ch. 339, § 2; Laws, 1994, ch. 303, § 1; Laws, 2000, ch. 412, § 1; Laws, 2004, ch. 572, § 10; Laws, 2007, ch. 606, § 4; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 10, eff from and after July 1, 2008; reenacted without change, Laws, 2010, ch. 559, § 9, eff from and after July 1, 2010; reenacted without change, Laws, 2011, ch. 471, § 10, eff from and after July 1, 2011.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, and as amended by Laws of 2011, ch. 471, § 59, provides:

"SECTION 60. This act shall stand repealed on July 1, 2014."

Amendment Notes — The 2010 amendment reenacted the section without change.

The 2011 amendment reenacted the section without change.

Cross References — Unemployment Compensation Fund, see §§ 71-5-451 through 71-5-459.

Federal Aspects — Section 303(g) of the Social Security Act, see 42 USCS § 303(g).

JUDICIAL DECISIONS

1. In general.

Mississippi Department of Employment Security was not entitled to use collection actions to recover unemployment benefits paid where there was no nondisclosure or fraud in the case of an employee who was later disqualified for misconduct; even if voluntary repayment was allowed, the language of the notice to the employee did not suggest that it was voluntary in nature. Acy v. Miss. Empl. Sec. Comm'n, — So. 2d —, 2007 Miss. App. LEXIS 54 (Miss. Ct. App. Feb. 6, 2007), substituted opinion at, opinion withdrawn by 960 So. 2d 592, 2007 Miss. App. LEXIS 469 (Miss. Ct. App. 2007).

Employee admitted she voluntarily left her job in Mississippi to pursue educational opportunities. Thus, pursuant to Miss. Code Ann. § 71-5-513 A(1)(a) she was not entitled to unemployment benefits, and under Miss. Code Ann. § 71-5-19(4), she was obligated to repay said benefits that she was not entitled to. Westbrook v. Miss. Empl. Sec. Comm'n, 910 So. 2d 1135 (Miss. Ct. App. 2005).

Although Miss. Code Ann. § 71-5-19(4) clearly gave the Mississippi Employment Security Commission (MESC) (now Department of Employment Security) the right to seek full repayment and there was not a requirement of any fraudulent intent in order to do so, the MESC's decision to seek full repayment of unemployment benefits was arbitrary and capricious, because the claimant's failure to testify did not amount to fraud. Miss. Emp. Sec. Comm'n v. Jones, 826 So. 2d 77 (Miss. 2002).

As there was no fraud committed by former employee in seeking unemployment benefits, the Mississippi Employment Security Commission (now Department of Employment Security) could not pursue active collection measures against the employee for benefits that were paid but later revoked. Caraway v. Miss. Emp. Sec. Comm'n, 826 So. 2d 100 (Miss. Ct. App. 2002).

Unemployment benefits paid to company employees during a strike could not be recouped by the Mississippi Employment Security Commission (now Department of Employment Security) as a result of a monetary settlement of unfair labor practice charges before the National Labor Relations Board, since §§ 71-5-19(4) and 71-5-517 provided no basis, implicit or explicit, for recoupment of the benefits where there was no evidence of wrongdoing or misrepresentation by the employees. Jones v. Mississippi Emp. Sec. Comm'n, 648 So. 2d 1138 (Miss. 1995).

Findings by Board of Review of Employment Security Commission (now Department of Employment Security) that claimant was overpaid because of error in initial evaluation of claim was determination of fact which should not be reversed by circuit court since it was supported by substantial evidence, but question whether overpayment could be collected was not passed upon by referee or Board, and thus court should not pass upon questions of law not determined by administrative agencies. Mississippi Emp. Sec. Comm'n v. Sellers, 505 So. 2d 281 (Miss. 1987).

RESEARCH REFERENCES

ALR. Criminal liability for wrongfully obtaining unemployment benefits. 80 A.L.R.3d 1280.

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation §§ 195, 197-200.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 285, 337-342.

§ 71-5-21. Saving clause.

The legislature reserves the right to amend or repeal all or any part of this chapter at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this chapter or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this chapter at any time.

SOURCES: Codes, 1942, § 7443; Laws, 1940, ch. 295.

ARTICLE 3.

MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY.

SEC.
71-5-101. Organization [Repealed effective July 1, 2014].
71-5-103 and 71-5-105. Repealed.
71-5-107. Executive officer [Repealed effective July 1, 2014].
71-5-109. Board of review [Repealed effective July 1, 2014].
71-5-111. Employment security administration fund [Repealed effective July 1, 2014].
71-5-112. Funds to clear through state treasury; laws governing expenditures [Repealed effective July 1, 2014].
71-5-113. Funds received from the Social Security Board [Repealed effective July 1, 2014].
71-5-114. Special employment security administration fund [Repealed effective July 1, 2014].
71-5-115. Duties and powers of executive director [Repealed effective July 1, 2014].

71-5-117.	Regulations and general rules [Repealed effective July 1, 2014].
71-5-119.	Publication [Repealed effective July 1, 2014].
71-5-121.	Personnel [Repealed effective July 1, 2014].
71-5-123.	Advisory councils [Repealed effective July 1, 2014].
71-5-125.	Promotion of employment [Repealed effective July 1, 2014].
71-5-127.	Records and reports; confidentiality of information [Repealed effective July 1, 2014].
71-5-129.	Destruction of useless records [Repealed effective July 1, 2014].
71-5-131.	Privileged communications [Repealed effective July 1, 2014].
71-5-133.	Failure to produce records [Repealed effective July 1, 2014].
71-5-135.	Failure to make reports [Repealed effective July 1, 2014].
71-5-137.	Oaths and witnesses [Repealed effective July 1, 2014].
71-5-139.	Subpoenas [Repealed effective July 1, 2014].
71-5-141.	Protection against self-incrimination [Repealed effective July 1, 2014].
71-5-143.	State-federal cooperation [Repealed effective July 1, 2014].
71-5-145.	1235 Echelon Parkway named the Henry J. Kirksey Building.

§ 71-5-101. Organization [Repealed effective July 1, 2014].

There is established the Mississippi Department of Employment Security, Office of the Governor. The Department of Employment Security shall be the Mississippi Employment Security Commission and shall retain all powers and duties as granted to the Mississippi Employment Security Commission. Wherever the term "Employment Security Commission" appears in any law, the same shall mean the Mississippi Department of Employment Security, Office of the Governor. The Executive Director of the Department of Employment Security may assign to the appropriate offices such powers and duties deemed appropriate to carry out the lawful functions of the department.

SOURCES: Codes, 1942, §§ 7399, 7400; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 2; Laws, 1948, ch. 412, §§ 5a, 5b; Laws, 2004, ch. 572, § 11; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 11, eff from and after July 1, 2008; reenacted without change, Laws, 2010, ch. 559, § 10; reenacted without change, Laws, 2011, ch. 471, § 11, eff from and after July 1, 2011.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, and as amended by Laws of 2011, ch. 471, § 59, provides:

"SECTION 60. This act shall stand repealed on July 1, 2014."

Amendment Notes — The 2010 amendment reenacted the section without change. The 2011 amendment reenacted the section without change.

Cross References — Power of governor to make appointments and fill vacancies, see § 7-1-5.

RESEARCH REFERENCES

CJS. 81 C.J.S., Social Security and Public Welfare §§ 467 et seq.

§§ 71-5-103 and 71-5-105. Repealed.

Repealed by Laws, 2004, ch. 572, § 59 effective from and after July 1, 2004.

§ 71-5-103. Codes, 1942, § 7401; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 2; Laws, 1948, ch. 412, § 5c, eff July 1, 1948.

§ 71-5-105. Codes, 1942, § 7402; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 2; Laws, 1948, ch. 412, § 5d; Laws, 1975, ch. 514, eff from and after July 1, 1975.

Editor's Note — Former Section 71-5-103 was entitled: "Meetings."
Former Section 71-5-105 was entitled: "Salaries."

§ 71-5-107. Executive officer [Repealed effective July 1, 2014].

The department shall administer this chapter through a full-time salaried executive director, to be appointed by the Governor, with the advice and consent of the Senate. He shall be responsible for the administration of this chapter under authority delegated to him by the Governor.

SOURCES: Codes, 1942, § 7403; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 2; Laws, 1948, ch. 412, § 5e; Laws, 2004, ch. 572, § 12; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 12; reenacted without change, Laws, 2010, ch. 559, § 11; reenacted without change, Laws, 2011, ch. 471, § 12, eff from and after July 1, 2011.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, and as amended by Laws of 2011, ch. 471, § 59, provides:

"SECTION 60. This act shall stand repealed on July 1, 2014."

Amendment Notes — The 2010 amendment reenacted the section without change. The 2011 amendment reenacted the section without change.

RESEARCH REFERENCES

CJS. 81 C.J.S., Social Security and Public Welfare §§ 467 et seq.

§ 71-5-109. Board of review [Repealed effective July 1, 2014].

There is created a Board of Review consisting of three (3) members to be appointed by the executive director. The executive director shall designate one (1) member of the Board of Review as chairman. Each member shall be paid a salary or per diem at a rate to be determined by the executive director, and such expenses as may be allowed by the executive director. All salaries, per diem and expenses of the Board of Review shall be paid from the Employment Security Administration Fund.

SOURCES: Codes, 1942, § 7404; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 2; Laws, 1948, ch. 412, § 5f; Laws, 2004, ch. 572, § 13; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 13; reenacted without change,

Laws, 2010, ch. 559, § 12; reenacted without change, Laws, 2011, ch. 471, § 13, eff from and after July 1, 2011.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, and as amended by Laws of 2011, ch. 471, § 59, provides:

"SECTION 60. This act shall stand repealed on July 1, 2014."

Amendment Notes — The 2010 amendment reenacted the section without change.

The 2011 amendment reenacted the section without change.

JUDICIAL DECISIONS

1. In general.

In proceeding by board of review for order compelling an individual to produce stock books and payrolls of corporation, wherein chancellor refused order and issued restraining order against enforcement of duces tecum writ issued by commission, restraining order properly applied against commission as against contention that commission was not a party to the proceeding, since under the statute and also under the facts of the case, the commission was so connected with the board of review that the restraining order could issue against it as a matter of proper procedure. Board of Review v. Williams, 195 Miss. 618, 15 So. 2d 48 (1943).

RESEARCH REFERENCES

CJS. 81 C.J.S., Social Security and Public Welfare §§ 467 et seq.

§ 71-5-111. Employment security administration fund [Repealed effective July 1, 2014].

There is created in the State Treasury a special fund to be known as the Employment Security Administration Fund. All monies which are deposited or paid into this fund are appropriated and made available to the department. All monies in this fund shall be expended solely for the purpose of defraying the cost of administration of this chapter, and for no other purpose whatsoever. The fund shall consist of all monies appropriated by this state and all monies received from the United States of America, or any agency thereof, or from any other source for such purpose. Notwithstanding any provision of this section, all monies requisitioned and deposited in this fund pursuant to Section 71-5-457 shall remain part of the Employment Security Administration Fund and shall be used only in accordance with the conditions specified in that section. All monies in this fund shall be deposited, administered and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State Treasury. The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the Employment Security Administration Fund under this chapter.

SOURCES: Codes, 1942, § 7421; Laws, 1940, ch. 295, § 11; Laws, 1948, ch. 412, § 8a; Laws, 1958, ch. 536, § 2(a); Laws, 2004, ch. 572, § 14; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 14; reenacted without

change, Laws, 2010, ch. 559, § 13; reenacted without change, Laws, 2011, ch. 471, § 14, eff from and after July 1, 2011.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, and as amended by Laws of 2011, ch. 471, § 59, provides:

"SECTION 60. This act shall stand repealed on July 1, 2014."

Amendment Notes — The 2010 amendment reenacted the section without change.

The 2011 amendment reenacted the section without change.

Cross References — Special employment security administration fund and its uses, see § 71-5-114.

JUDICIAL DECISIONS

1. In general.

An unemployment compensation claimant was not entitled to benefits since excessive garnishments upon his wages constituted "misconduct" connected with his work under § 71-5-513(A)(2), in accordance with the public policy stated in § 71-5-3, the implementation of which is accomplished through contributions of all covered employers into the state employment fund pursuant to §§ 71-5-111 and 71-5-351. Mississippi Emp. Sec. Comm'n v. Borden, Inc., 451 So. 2d 222 (Miss. 1984).

The state employment security commission is not exempted from the payment of court costs incurred in connection with litigation in which it engages. Mississippi Emp. Sec. Comm'n v. Wilks, 251 Miss. 744, 171 So. 2d 157 (1965).

RESEARCH REFERENCES

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation § 2.

CJS. 81 C.J.S., Social Security and Public Welfare § 353.

§ 71-5-112. Funds to clear through state treasury; laws governing expenditures [Repealed effective July 1, 2014].

All funds received by the Mississippi Department of Employment Security shall clear through the State Treasury as provided and required by Sections 71-5-111 and 71-5-453. All expenditures from the administration fund of the department authorized by Section 71-5-111 shall be expended only pursuant to appropriation approved by the Legislature and as provided by law.

SOURCES: Laws, 1973, ch. 381, § 3; Laws, 1974, ch. 334; Laws, 1984, ch. 488, § 273; Laws, 2004, ch. 572, § 15; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 15; reenacted and amended, Laws, 2010, ch. 559, § 14; reenacted without change, Laws, 2011, ch. 471, § 15, eff from and after July 1, 2011.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, and as amended by Laws of 2011, ch. 471, § 59, provides:

"SECTION 60. This act shall stand repealed on July 1, 2014."

Amendment Notes — The 2010 amendment reenacted and amended the section and substituted "Mississippi Department of Employment Security" for "Mississippi Employment Security Commission."

The 2011 amendment reenacted the section without change.

Cross References — Interest on funds in account of Mississippi Employment Security Commission Fixed Price Contract Account to be retained as part of account used for Job Training Partnership Act programs, see § 7-9-12.

§ 71-5-113. Funds received from the Social Security Board [Repealed effective July 1, 2014].

All monies received from the Social Security Board or its successors for the administration of this chapter shall be expended solely for the purposes and in the amounts found necessary by the Social Security Board or its successors for the proper and efficient administration of this chapter.

It shall be the duty of the department to take appropriate action with respect to the replacement, within a reasonable time, of any monies received from the Social Security Board, or its successors, for the administration of this chapter, and monies used to match grants pursuant to the provisions of the Wagner-Peyser Act, which the board, or its successors, find, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of those found necessary by the Social Security Board, or its successors, for the proper administration of this chapter. Funds which have been expended by the department or its agents in accordance with the budget approved by the Social Security Board, or its successors, or in accordance with the general standards and limitations promulgated by the Social Security Board, or its successors, prior to such expenditure (where proposed expenditures have not been specifically disapproved by the Social Security Board, or its successors), shall not be deemed to require replacement. To effectuate the purposes of this paragraph, it shall be the duty of the department to take such action to safeguard the expenditure of the funds referred to herein as it deems necessary. In the event of a loss of such funds or an improper expenditure thereof as herein defined, it shall be the duty of the department to notify the Governor of any such loss or improper expenditure and submit to him a request for an appropriation in the amount thereof. The Governor shall transmit to the next regular session of the Legislature following such notification, the department's request for an appropriation in an amount necessary to replace funds which have been lost or improperly expended as defined above. Such request of the department for an appropriation shall not be subject to the provisions of Sections 27-103-101 through 27-103-139. The Legislature recognizes its obligation to replace such funds as may be necessary and shall make necessary appropriations in accordance with such requests.

SOURCES: Codes, 1942, § 7422; Laws, 1940, ch. 295, § 11; Laws, 1948, ch. 412, § 8b, c; Laws, 1958, ch. 536, § 2b, c; Laws, 2004, ch. 572, § 16; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 16; reenacted without change, Laws, 2010, ch. 559, § 15; reenacted without change, Laws, 2011, ch. 471, § 16, eff from and after July 1, 2011.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, and as amended by Laws of 2011, ch. 471, § 59, provides:

"SECTION 60. This act shall stand repealed on July 1, 2014."

Amendment Notes — The 2010 amendment reenacted the section without change. The 2011 amendment reenacted the section without change.

Cross References — Use, pursuant to this section, of moneys from special employment security administration fund, see § 71-5-114.

Financing state employment service, see § 71-5-203.

Federal Aspects — Wagner-Peyser Act, see 29 USCS §§ 49 et seq.

§ 71-5-114. Special employment security administration fund [Repealed effective July 1, 2014].

There is created in the State Treasury a special fund, to be known as the "Special Employment Security Administration Fund," into which shall be deposited or transferred all interest, penalties and damages collected on and after July 1, 1982, pursuant to Sections 71-5-363 through 71-5-379. Interest, penalties and damages collected on delinquent payments deposited during any calendar quarter in the clearing account in the Unemployment Compensation Fund shall, as soon as practicable after the close of such calendar quarter, be transferred to the Special Employment Security Administration Fund. All monies in this fund shall be deposited, administered and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State Treasury. The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the Special Employment Security Administration Fund under this chapter. Those monies shall not be expended or made available for expenditure in any manner which would permit their substitution for (or permit a corresponding reduction in) federal funds which would, in the absence of those monies, be available to finance expenditures for the administration of the state unemployment compensation and employment service laws. Nothing in this section shall prevent those monies in this fund from being used as a revolving fund to cover expenditures necessary and proper under the law for which federal funds have been duly requested but not yet received, subject to the charging of such expenditures against such funds when necessary. The monies in this fund may be used by the department for the payment of costs of administration of the employment security laws of this state which are found not to be or not to have been properly and validly chargeable against funds obtained from federal sources. All monies in this Special Employment Security Administration Fund shall be continuously available to the department for expenditure in accordance with the provisions of this chapter, and shall not lapse at any time. The monies in this fund are specifically made available to replace, as contemplated by Section 71-5-113, expenditures from the Employment Security Administration Fund established by Section 71-5-111, which have been found, because of any action or contingency, to have been lost or improperly expended.

The department, whenever it is of the opinion that the money in the Special Employment Security Administration Fund is more than ample to pay for all foreseeable needs for which such special fund is set up, may, by written order, order the transfer therefrom to the Unemployment Compensation Fund of such amount of money in the Special Employment Security Administration Fund as it deems proper, and the same shall thereupon be immediately transferred to the Unemployment Compensation Fund.

SOURCES: Laws, 1982, ch. 383, § 1; Laws, 2004, ch. 572, § 17; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 17; reenacted without change, Laws, 2010, ch. 559, § 16; reenacted without change, Laws, 2011, ch. 471, § 17, eff from and after July 1, 2011.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, and as amended by Laws of 2011, ch. 471, § 59, provides:

"SECTION 60. This act shall stand repealed on July 1, 2014."

Amendment Notes — The 2010 amendment reenacted the section without change.

The 2011 amendment reenacted the section without change.

Cross References — Unemployment compensation fund, see §§ 71-5-451 et seq.

Transfers from clearing account in unemployment compensation fund to special employment security administration fund, see § 71-5-453.

RESEARCH REFERENCES

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation §§ 2, 3.

CJS. 81 C.J.S., Social Security and Public Welfare § 353.

§ 71-5-115. Duties and powers of executive director [Repealed effective July 1, 2014].

It shall be the duty of the executive director to administer this chapter; and the executive director shall have the power and authority to adopt, amend or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as he deems necessary or suitable to that end. Such rules and regulations shall be effective upon publication in the manner, not inconsistent with the provisions of this chapter, which the executive director shall prescribe. The executive director shall determine the department's own organization and methods of procedure in accordance with the provisions of this chapter, and shall have an official seal which shall be judicially noticed. Not later than the first day of February in each year, the executive director shall submit to the Governor a report covering the administration and operation of this chapter during the preceding fiscal year and shall make such recommendations for amendments to this chapter as the executive director deems proper. Whenever the executive director believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, he shall promptly so inform the Governor and the Legislature, and make recommendations with respect thereto.

SOURCES: Codes, 1942, § 7405; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6a; Laws, 1952, ch. 383, § 4a; Laws, 1958, ch. 533, § 6a; Laws, 1962, ch. 564, § 3a; Laws, 2004, ch. 572, § 18; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 18; reenacted without change, Laws, 2010, ch. 559, § 17;

reenacted without change, Laws, 2011, ch. 471, § 18, eff from and after July 1, 2011.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, and as amended by Laws of 2011, ch. 471, § 59, provides:

"SECTION 60. This act shall stand repealed on July 1, 2014."

Amendment Notes — The 2010 amendment reenacted the section without change.

The 2011 amendment reenacted the section without change.

Cross References — Cooperation in carrying out provisions regarding job development and training, see § 7-1-365.

Assistance by Employment Security Commission in making relevant information available to Cooperative Extension Service for information clearinghouse assisting farmers, see § 69-2-5.

JUDICIAL DECISIONS

1. In general.
2. Rule promulgation authority.

1. In general.

A laid off employee was improperly denied unemployment compensation for the two week period following his receipt of a lump sum vacation payment; pursuant to § 71-5-11(O)(1), which provides in part that an individual is deemed unemployed in any week during which he performs no services, no wages were payable to the employee, in that he had performed no services for his former employer during the two weeks; the vacation pay flowed from services rendered prior to termination of his employment. Further, an administrative rule which provided that pay received after separation from an employer was considered to be "wages," was inconsistent with the legislative definition of "unemployment," and exceeded the powers granted the Commission by this section. Buse v. Mississippi Emp. Sec. Comm'n, 377 So. 2d 600, 14 A.L.R.4th 1171 (Miss. 1979).

2. Rule promulgation authority.

Award of unemployment benefits to the employee was inappropriate because the employee's failure to attend a hearing was fatal to the employee's appeal from the denial of unemployment benefits. The Mississippi Department of Employment Security (MDES) predicated its dismissal of the employee's claim upon MDES Appeal Regulation 10, and the regulation comported with the authority granted for the promulgation of rules and regulations, Miss. Code Ann. § 71-5-115. Miss. Dep't of Empl. Sec. v. Johnson, 977 So. 2d 1273 (Miss. Ct. App. 2008).

RESEARCH REFERENCES

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation §§ 8, 88.

CJS. 81 C.J.S., Social Security and Public Welfare § 471, 472.

§ 71-5-117. Regulations and general rules [Repealed effective July 1, 2014].

General rules may be adopted, amended or rescinded by the executive director only after public hearing or opportunity to be heard thereon, of which proper notice has been given. General rules shall become effective ten (10) days after filing with the Secretary of State and publication in one or more newspapers of general circulation in this state. Regulations may be adopted, amended or rescinded by the executive director and shall become effective in the manner and at the time prescribed by the executive director.

SOURCES: Codes, 1942, § 7406; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6b; Laws, 1952, ch. 383, § 4b; Laws, 1958, ch. 533, § 6b; Laws, 1962, ch. 564, § 3b; Laws, 2004, ch. 572, § 19; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 19; reenacted without change, Laws, 2010, ch. 559, § 18; reenacted without change, Laws, 2011, ch. 471, § 19, eff from and after July 1, 2011.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, and as amended by Laws of 2011, ch. 471, § 59, provides:

"SECTION 60. This act shall stand repealed on July 1, 2014."

Amendment Notes — The 2010 amendment reenacted the section without change. The 2011 amendment reenacted the section without change.

Cross References — Publication of agreements providing reciprocal treatment to individuals acquiring unemployment compensation rights under this and other systems, see § 71-5-11.

RESEARCH REFERENCES

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation §§ 8, 88.

CJS. 81 C.J.S., Social Security and Public Welfare § 473.

§ 71-5-119. Publication [Repealed effective July 1, 2014].

The department shall cause to be available for distribution to the public the text of this chapter, its regulations and general rules, its reports to the Governor, and any other material it deems relevant and suitable, and shall furnish the same to any person upon application therefor.

SOURCES: Codes, 1942, § 7407; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6c; Laws, 1952, ch. 383, § 4c; Laws, 1958, ch. 533, § 6c; Laws, 1962, ch. 564, § 3c; Laws, 2004, ch. 572, § 20; Laws, 2007, ch. 606, § 5; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 20; reenacted without change, Laws, 2010, ch. 559, § 19; reenacted without change, Laws, 2011, ch. 471, § 20, eff from and after July 1, 2011.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, and as amended by Laws of 2011, ch. 471, § 59, provides:

"SECTION 60. This act shall stand repealed on July 1, 2014."

Amendment Notes — The 2010 amendment reenacted the section without change. The 2011 amendment reenacted the section without change.

§ 71-5-121. Personnel [Repealed effective July 1, 2014].

Subject to other provisions of this chapter, the executive director is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts and other persons as may be necessary in the performance of department duties; however, all personnel who were former members of the Armed Forces of the United States of America shall be given credit regardless of rate, rank or commission. All positions shall be filled by persons selected and appointed on a nonpartisan merit basis, in accordance with Section 25-9-101 et seq., that provides for a state service personnel system. The executive director shall not employ any person who is an officer or committee member of any political party organization. The executive director may delegate to any such person so appointed such power and authority as he deems reasonable and proper for the effective administration of this chapter, and may in his discretion bond any person handling monies or signing checks hereunder. The veteran status of an individual shall be considered and preference given in accordance with the provisions of the State Personnel Board.

The department and its employees are exempt from Sections 25-15-101 and 25-15-103.

The department may use federal granted funds to provide such group health, life, accident and hospitalization insurance for its employees as may be agreed upon by the department and the federal granting authorities.

The department shall adopt a "layoff formula" to be used wherever it is determined that, because of reduced workload, budget reductions or in order to effect a more economical operation, a reduction in force shall occur in any group.

In establishing this formula, the department shall give effect to the principle of seniority and shall provide that seniority points may be added for disabled veterans and veterans, with due regard to the efficiency of the service. Any such layoff formula shall be implemented according to the policies, rules and regulations of the State Personnel Board.

SOURCES: Codes, 1942, § 7408; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6d; Laws, 1952, ch. 383, § 4d; Laws, 1958, ch. 533, § 6d; Laws, 1962, ch. 564, § 3d; Laws, 1964, ch. 442, § 3; Laws, 1995, ch. 507, § 1; Laws, 2004, ch. 572, § 21; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 21; reenacted without change, Laws, 2010, ch. 559, § 20; reenacted without change, Laws, 2011, ch. 471, § 21, eff from and after July 1, 2011.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, and as amended by Laws of 2011, ch. 471, § 59, provides:

"SECTION 60. This act shall stand repealed on July 1, 2014."

Amendment Notes — The 2010 amendment reenacted the section without change. The 2011 amendment reenacted the section without change.

RESEARCH REFERENCES

CJS. 81 C.J.S., Social Security and Public Welfare §§ 467 et seq.

§ 71-5-123. Advisory councils [Repealed effective July 1, 2014].

The executive director shall retain all powers and duties as granted to the state advisory council appointed by the former Employment Security Commission. The executive director may appoint local advisory councils, composed in each case of an equal number of employer representatives and employee representatives who may fairly be regarded as representative because of their vocation, employment or affiliations, and of such members representing the general public as the executive director may designate. Such councils shall aid the department in formulating policies and discussing problems related to the administration of this chapter and in assuring impartiality and freedom from political influence in the solution of such problems. Members of the advisory councils shall receive a per diem in accordance with Section 25-3-69 for attendance upon meetings of the council, and shall be reimbursed for actual and necessary traveling expenses. The per diem and expenses herein authorized shall be paid from the Employment Security Administration Fund.

SOURCES: Codes, 1942, § 7409; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6e; Laws, 1952, ch. 383, § 4e; Laws, 1958, ch. 533, § 6e; Laws, 1962, ch. 564, § 3e; Laws, 1989, ch. 320, § 1; Laws, 2004, ch. 572, § 22; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 22; reenacted without change, Laws, 2010, ch. 559, § 21; reenacted without change, Laws, 2011, ch. 471, § 22, eff from and after July 1, 2011.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, and as amended by Laws of 2011, ch. 471, § 59, provides:

"SECTION 60. This act shall stand repealed on July 1, 2014."

Amendment Notes — The 2004 amendment added the first sentence; substituted "executive director" for "commission" in the second sentence; and substituted "department" for "commission" in the third sentence.

The 2008 amendment reenacted the section without change.

The 2010 amendment reenacted the section without change.

The 2011 amendment reenacted the section without change.

RESEARCH REFERENCES

CJS. 81 C.J.S., Social Security and Public Welfare §§ 467 et seq.

§ 71-5-125. Promotion of employment [Repealed effective July 1, 2014].

The department shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise and assist in the establishment and operation, by municipalities, counties, school districts and the state, of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the state in every other way that may be feasible; and to these ends to carry on and publish the results of investigation and research studies.

SOURCES: Codes, 1942, § 7410; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6f; Laws, 1952, ch. 383, § 4f; Laws, 1958, ch. 533, § 6f; Laws, 1962, ch. 564, § 3f; Laws, 2004, ch. 572, § 23; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 23; reenacted without change, Laws, 2010, ch. 559, § 22; reenacted without change, Laws, 2011, ch. 471, § 23, eff from and after July 1, 2011.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, and as amended by Laws of 2011, ch. 471, § 59, provides:

"SECTION 60. This act shall stand repealed on July 1, 2014."

Amendment Notes — The 2010 amendment reenacted the section without change. The 2011 amendment reenacted the section without change.

RESEARCH REFERENCES

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation §§ 8, 88.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 471, 472.

§ 71-5-127. Records and reports; confidentiality of information [Repealed effective July 1, 2014].

(1) Any information or records concerning an individual or employing unit obtained by the department pursuant to the administration of this chapter or any other federally funded programs for which the department has responsibility shall be private and confidential, except as otherwise provided in this article or by regulation. Information or records may be released by the department when the release is required by the federal government in connection with, or as a condition of funding for, a program being administered by the department.

(2) Each employing unit shall keep true and accurate work records, containing such information as the department may prescribe. Such records shall be open to inspection and be subject to being copied by the department or its authorized representatives at any reasonable time and as often as may be necessary. The department, Board of Review and any referee may require from any employing unit any sworn or unsworn reports with respect to persons employed by it which they or any of them deem necessary for the effective administration of this chapter. Information, statements, transcriptions of proceedings, transcriptions of recordings, electronic recordings, letters, memoranda, and other documents and reports thus obtained or obtained from any individual pursuant to the administration of this chapter shall, except to the extent necessary for the proper administration of this chapter, be held confidential and shall not be published or be opened to public inspection (other than to public employees in the performance of their public duties) in any manner revealing the individual's or employing unit's identity.

(3) Any claimant or his legal representative at a hearing before an appeal tribunal or the Board of Review shall be supplied with information from such records to the extent necessary for the proper presentation of his claim in any proceeding pursuant to this chapter.

(4) Any employee or member of the Board of Review or any employee of the department who violates any provisions of this section shall be fined not less than Twenty Dollars ($20.00) nor more than Two Hundred Dollars ($200.00), or imprisoned for not longer than ninety (90) days, or both.

(5) The department may make the state's records relating to the administration of this chapter available to the Railroad Retirement Board, and may furnish the Railroad Retirement Board, at the expense of such board, such copies thereof as the Railroad Retirement Board deems necessary for its purposes. The department may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law.

SOURCES: Codes, 1942, § 7411; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6g(1); Laws, 1952, ch. 383, § 4g(1); Laws, 1958, ch. 533, § 6g(1); Laws, 1962, ch. 564, § 3g(1); Laws, 2004, ch. 572, § 24; Laws, 2007, ch. 606, § 6; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 24; reenacted without change, Laws, 2010, ch. 559, § 23; reenacted without change, Laws, 2011, ch. 471, § 24, eff from and after July 1, 2011.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, and as amended by Laws of 2011, ch. 471, § 59, provides:

"SECTION 60. This act shall stand repealed on July 1, 2014."

Amendment Notes — The 2010 amendment reenacted the section without change. The 2011 amendment reenacted the section without change.

JUDICIAL DECISIONS

1. In general.

The statute [Code 1942, § 7411] only confers confidentiality which bans publication or opening of records "to public inspection;" subpoena-compelled availability of such records in defense of a claim made for a beneficiary of the Act is not expressly covered and should not be implied to bar access to facts relevant to the issues raised by a back pay claim before the NLRB. Marine Welding & Repair Works, Inc. v. NLRB, 492 F.2d 526 (5th Cir. 1974).

The Mississippi employment security provision, requiring each employing unit to keep work records but providing that information thus obtained be held confidential and not published or opened to public inspection, did not create an absolute privilege prohibiting the commission manager from disclosing, in a federal civil rights suit against an employer, the information contained in commission records, and an order of the federal district court requiring the manager to produce such records would afford the manager complete protection from prosecution for the violation of the Mississippi prohibition against publication of the information. Fears v. Burris Mfg. Co., 436 F.2d 1357 (5th Cir. 1971).

The potential harm from disclosure of any employment security commission records subject to a privilege must be weighed against the benefits of such disclosure, and in the case of charges of racial discrimination in employment and in handling job applications and referrals, the value of disclosure outweighed the possible side effects of such disclosure. Carr v.

Monroe Mfg. Co., 431 F.2d 384 (5th Cir. 1970), cert. denied, 400 U.S. 1000, 91 S. Ct. 456, 27 L. Ed. 2d 451 (1971).

Although denying the employment security commission's request that it be allowed to place tape on application cards over the names of all applicants referred to the corporation defendant except the named plaintiffs and of all employers except the corporate defendant to whom referrals were made, the district court property ordered extensive protective devices to assure that neither the original records nor copies would reach any nonparty, and that the parties and their counsel would use the records only for purposes of the instant litigation. Carr v. Monroe Mfg. Co., 431 F.2d 384 (5th Cir. 1970), cert. denied, 400 U.S. 1000, 91 S. Ct. 456, 27 L. Ed. 2d 451 (1971).

In a case against an individual employer and the state employment security commission charging, respectively, racial discrimination in employment and in handling job applications and referrals, discovery was properly granted as to certain employment security commission records, including the application cards of all those referred to the corporate defendant. Carr v. Monroe Mfg. Co., 431 F.2d 384 (5th Cir. 1970), cert. denied, 400 U.S. 1000, 91 S. Ct. 456, 27 L. Ed. 2d 451 (1971).

ATTORNEY GENERAL OPINIONS

The Mississippi Department of Employment Security's alien labor program is exempt from the Mississippi Public Records Act, and thus, confidential in regards to requests made by third-party advocacy groups. Fitch, Nov. 18, 2005, A.G. Op. 05-0499.

RESEARCH REFERENCES

CJS. 81 C.J.S., Social Security and Public Welfare §§ 471, 472.

§ 71-5-129. Destruction of useless records [Repealed effective July 1, 2014].

Records hereinafter designated, which are found by the department to be useless, may be disposed of in accordance with approved records control schedules.

(a) Records which have been preserved by it for not less than three (3) years:

(1) Initial claims for benefits,

(2) Continued claims for benefits,

(3) Correspondence and master index cards in connection with such claims for benefits, and

(4) Individual wage slips filed by employers subject to the provisions of the Unemployment Compensation Law.

(b) Records which have been preserved by it for not less than six (6) months after becoming inactive:

(1) Work applications,

(2) Cross-index cards for work applications,

(3) Test records,

(4) Employer records,

(5) Work orders,

(6) Clearance records,

(7) Counseling records,
(8) Farm placement records, and
(9) Correspondence relating to all such records.

Nothing herein contained shall be construed as authorizing the destruction or disposal of basic fiscal records reflecting the financial operations of the department and no records may be destroyed without the approval of the Director of the Department of Archives and History.

SOURCES: Codes, 1942, §§ 7411-01, 7411-02, 7411-03; Laws, 1944, ch. 290, § 1; Laws, 1950, ch. 418; Laws, 1952, ch. 390; Laws, 1970, ch. 504, § 1; Laws, 1981, ch. 501, § 25; Laws, 1987, ch. 318; Laws, 2004, ch. 572, § 25; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 25; reenacted without change, Laws, 2010, ch. 559, § 24; reenacted without change, Laws, 2011, ch. 471, § 25, eff from and after July 1, 2011.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, and as amended by Laws of 2011, ch. 471, § 59, provides:

"SECTION 60. This act shall stand repealed on July 1, 2014."

Amendment Notes — The 2010 amendment reenacted the section without change.

The 2011 amendment reenacted the section without change.

Cross References — For requirement that consent of Director of Department of Archives and History be obtained prior to destruction of public records, see §§ 25-59-21, 25-59-31.

Archives and Records Management Law generally, see §§ 25-59-21 et seq.

§ 71-5-131. Privileged communications [Repealed effective July 1, 2014].

All letters, reports, communications, or any other matters, either oral or written, from the employer or employee to each other or to the department or any of its agents, representatives or employees, which shall have been written, sent, delivered or made in connection with the requirements and administration of this chapter shall be absolutely privileged and shall not be made the subject matter or basis of any suit for slander or libel in any court of the State of Mississippi unless the same be false in fact and maliciously written, sent, delivered or made for the purpose of causing a denial of benefits under this chapter.

SOURCES: Codes, 1942, § 7412; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6g(2); Laws, 1952, ch. 383, § 4g(2); Laws, 1958, ch. 533, § 6g(2); Laws, 1962, ch. 564, § 3g(2); Laws, 2004, ch. 572, § 26; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 26; reenacted without change, Laws, 2010, ch. 559, § 250; reenacted without change, Laws, 2011, ch. 471, § 26, eff from and after July 1, 2011.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, and as amended by Laws of 2011, ch. 471, § 59, provides:

"SECTION 60. This act shall stand repealed on July 1, 2014."

Amendment Notes — The 2010 amendment reenacted the section without change.

The 2011 amendment reenacted the section without change.

Cross References — Actionable words, see § 95-1-1.

JUDICIAL DECISIONS

1. In general.
2. Illustrative cases.

1. In general.

Former employee's defamation claim against his former co-worker was properly dismissed on summary judgment because the co-worker enjoyed an absolute privilege for her statement, made during a Mississippi Employment Security Commission hearing. Raiola v. Chevron U.S.A., Inc., 872 So. 2d 79 (Miss. Ct. App. 2004).

An employee failed to prove that statements made by his employer to the Mississippi Employment Security Commission were false or maliciously made, and therefore the statements maintained their privileged status and could not be the basis for a libel or slander suit, where the employee's only evidence was his allegation that his employer defamed him by stating that he was fired for a "bad attitude" and his testimony at trial that the employer's contention that he was insubordinate was false. McArn v. Allied Bruce-Terminix Co., 626 So. 2d 603 (Miss. 1993).

Statement by assistant manager of store that plaintiff and two others trifled with store's money with ill intent was not privileged under this section [Code 1942, § 7412], as alleged accusation was not made in connection with requirements and administration of unemployment compensation law nor were they made for purpose of causing denial of benefits under the law. Montgomery Ward & Co. v. Harland, 205 Miss. 380, 38 So. 2d 771 (1949).

2. Illustrative cases.

Employer's statements to the Mississippi Employment Security Commission about a discharged employee were privileged under Miss. Code Ann. § 71-5-131 because there was no evidence that the employer acted falsely or maliciously in stating that the employee was discharged because he had falsified documents. McGinty v. Acuity Speciality Prods. Group, — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 4957 (S.D. Miss. Jan. 22, 2009).

RESEARCH REFERENCES

ALR. Right of one against whom testimony is offered to invoke privilege of communication between others. 2 A.L.R.2d 645.

Am Jur. 50 Am. Jur. 2d, Libel and Slander §§ 255 et seq.

5 Am. Jur. Proof of Facts 3d, Defamation by Employer, §§ 1 et seq.

CJS. 53 C.J.S., Libel and Slander; Injurious Falsehood §§ 104 et seq.

§ 71-5-133. Failure to produce records [Repealed effective July 1, 2014].

In any case where an employing unit or any officer, member or agent thereof, or any other person having possession of the records thereof, shall fail or refuse upon demand by the department or its duly appointed agents to produce or permit the examination or copying of any book, paper, account, record or other data pertaining to payrolls or employment or ownership of interests or stock in any employing unit, or bearing upon the correctness of any report, or for the purpose of making a report as required by this chapter where none has been made, then and in that event the department or its duly authorized agents may, by the issuance of a subpoena, require the attendance of such employing unit or any officer, member or agent thereof, or any other person having possession of the records thereof, and take testimony with respect to any such matter and may require any such person to produce any books or records specified in such subpoena. The department or its authorized agents at any such hearing shall have power to administer oaths to any such person or persons. When any person called as a witness by a subpoena signed by the department or its agents and served upon him by the sheriff of a county of which such person is a resident, or wherein is located the principal office of such employing unit or wherein such records are located or kept, shall fail to obey such subpoena to appear before the department or its authorized agent, or shall refuse to testify or to answer any questions or to produce any book, record, paper or other data when required to do so, such failure or refusal shall be reported to the Attorney General, who shall thereupon institute proceedings by the filing of a petition in the name of the State of Mississippi, on the relation of the department, in the circuit court or other court of competent jurisdiction of the county where such witness resides, or wherein such records are located or kept, to compel the obedience of such witness. Such petition shall set forth the facts and circumstances of the demand for and refusal or failure to permit the examination or copying of such records, or the failure or refusal of such witness to testify in answer to such subpoena or to produce the records so required by such subpoena. Such court, upon the filing and docketing of such petition, shall thereupon promptly issue an order to the defendants named in the petition to produce forthwith in such court, or at a place in such county designated in such order for the examination or copying by the department or its duly appointed agents, the records, books or documents so described, and to testify concerning matters described in such petition. Unless such defendants to such petition shall appear in the court upon a day specified in such order, which day shall be not more than ten (10) days after the date of issuance of such order, and offer, under oath, good and sufficient reasons why such examination or copying should not be permitted, or why such subpoena should not be obeyed, such court shall thereupon deliver to the department or its agents, for examination or copying, the records, books and documents so described in the petition and so produced in such court, and shall order the defendants to appear in answer to the subpoena of the department or its agents, and to testify concerning matters inquired about by the department. Any employing unit or any officer, member or agent thereof, or any other person having possession of the records thereof, who shall willfully disobey such order of the court after the same shall have been served upon him shall be guilty of indirect contempt of such court from which such order shall have issued, and may be adjudged in contempt of the court and punished therefor as provided by law.

SOURCES: Codes, 1942, § 7413; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6h; Laws, 1952, ch. 383, § 4h; Laws, 1958, ch. 533, § 6h; Laws, 1962, ch. 564, § 3h; Laws, 2004, ch. 572, § 27; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 27; reenacted without change, Laws, 2010, ch. 559, § 26; reenacted without change, Laws, 2011, ch. 471, § 27, eff from and after July 1, 2011.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, and as amended by Laws of 2011, ch. 471, § 59, provides:

"SECTION 60. This act shall stand repealed on July 1, 2014."

Amendment Notes — The 2010 amendment reenacted the section without change. The 2011 amendment reenacted the section without change.

Cross References — Power of courts to punish contempt, see § 9-1-17.

Subpoenas for witnesses, see § 13-3-93.

§ 71-5-135. Failure to make reports [Repealed effective July 1, 2014].

If any employing unit fails to make any report required by this chapter, the department or its authorized agents shall give notice to such employing unit to make and file such report within fifteen (15) days from the date of such notice. If such employing unit, by its proper members, officers or agents, shall fail or refuse to make and file such reports within such time, then and in that event such report shall be made by the department or its authorized agents from the best information available, and the amount of contributions due shall be computed thereon; and such report shall be prima facie correct for the purposes of this chapter.

SOURCES: Codes, 1942, § 7414; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6i; Laws, 1952, ch. 383, § 4i; Laws, 1958, ch. 533, § 6i; Laws, 1962, ch. 564, § 3i; Laws, 1992, ch. 362, § 1; Laws, 2004, ch. 572, § 28; Laws, 2007, ch. 606, § 7; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 28; reenacted without change, Laws, 2010, ch. 559, § 27; reenacted without change, Laws, 2011, ch. 471, § 28, eff from and after July 1, 2011.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, and as amended by Laws of 2011, ch. 471, § 59, provides:

"SECTION 60. This act shall stand repealed on July 1, 2014."

Amendment Notes — The 2010 amendment reenacted the section without change. The 2011 amendment reenacted the section without change.

§ 71-5-137. Oaths and witnesses [Repealed effective July 1, 2014].

In the discharge of the duties imposed by this chapter, the department, any referee, the members of the Board of Review, and any duly authorized representative of any of them shall have power to administer oaths and affirmations, to take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records deemed necessary as evidence in connection with a disputed claim or the administration of this chapter.

SOURCES: Codes, 1942, § 7415; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6j; Laws, 1952, ch. 383, § 4j; Laws, 1958, ch. 533, § 6j; Laws, 1962, ch. 564, § 3j; Laws, 2004, ch. 572, § 29; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 29; reenacted without change, Laws, 2010, ch. 559, § 28;

reenacted without change, Laws, 2011, ch. 471, § 29, eff from and after July 1, 2011.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, and as amended by Laws of 2011, ch. 471, § 59, provides:

"SECTION 60. This act shall stand repealed on July 1, 2014."

Amendment Notes — The 2010 amendment reenacted the section without change. The 2011 amendment reenacted the section without change.

Cross References — Issuance of subpoenas for witnesses, see § 13-3-93.

JUDICIAL DECISIONS

1. In general.

Power of commission and board of review to issue writs of duces tecum is subject to discretion of the court, as against contention that the commission and board have exclusive power to issue writs of duces tecum and that the only function of the court is to enforce production if the board and commission should determine that such production should be had. Board of Review v. Williams, 195 Miss. 618, 15 So. 2d 48 (1943).

In proceeding by board of review for an order requiring individual to produce stock books and payrolls of a corporation for inspection and evidence if desired in connection with a claim for compensation, chancellor did not err in refusing order for production where record showed that employee was employed by individual as a farm laborer and, therefore, not entitled to benefits under the statute evidence of the stockholders and employees of the corporation in such case being irrelevant. Board of Review v. Williams, 195 Miss. 618, 15 So. 2d 48 (1943).

In proceeding by board of review for order compelling an individual to produce stockbooks and payrolls of corporation, wherein chancellor refused order and issued restraining order against enforcement of duces tecum writ issued by commission, restraining order properly applied against commission as against contention that commission was not a party to the proceeding, since under the statute and also under the facts of the case, the commission was so connected with the board of review that the restraining order could issue against it as a matter of proper procedure. Board of Review v. Williams, 195 Miss. 618, 15 So. 2d 48 (1943).

RESEARCH REFERENCES

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation § 88.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 471, 472.

§ 71-5-139. Subpoenas [Repealed effective July 1, 2014].

In case of contumacy or refusal to obey a subpoena issued to any person, any court in this state within the jurisdiction of which the inquiry is carried on, or within the jurisdiction of which the person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the department, the Board of Review, any referee, or any duly authorized representative of any of them, shall have jurisdiction to issue to such person an order requiring such person to appear before the department, the Board of Review, any referee, or any duly authorized representative of any of them, there to produce evidence if so ordered or there to give testimony touching the matter under investigation or in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof. Any person who shall, without just cause, fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda and other records if it is in his power so to do, in obedience to a subpoena of the department, the Board of Review, any referee, or any duly authorized representative of any of them, shall be punished by a fine of not more than Two Hundred Dollars ($200.00), or by imprisonment for not longer than sixty (60) days, or by both such fine and imprisonment; and each day such violation continues shall be deemed to be a separate offense.

SOURCES: Codes, 1942, § 7416; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6k; Laws, 1952, ch. 383, § 4k; Laws, 1958, ch. 533, § 6k; Laws, 1962, ch. 564, § 3k; Laws, 2004, ch. 572, § 30; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 30; reenacted without change, Laws, 2010, ch. 559, § 29; reenacted without change, Laws, 2011, ch. 471, § 30, eff from and after July 1, 2011.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, and as amended by Laws of 2011, ch. 471, § 59, provides:

"SECTION 60. This act shall stand repealed on July 1, 2014."

Amendment Notes — The 2010 amendment reenacted the section without change. The 2011 amendment reenacted the section without change.

Cross References — Order to produce books and papers, see § 11-1-51.

Attachment for witness, see § 13-3-103.

JUDICIAL DECISIONS

1. In general.

Power of commission and board of review to issue writs of duces tecum is subject to discretion of the court, as against contention that the commission and board have exclusive power to issue writs of duces tecum and that the only function of the court is to enforce production if the board and commission should determine that such production should be had. Board of Review v. Williams, 195 Miss. 618, 15 So. 2d 48 (1943).

In proceeding by board of review for an order requiring individual to produce stock books and payrolls of a corporation for inspection and evidence if desired in connection with a claim for compensation, chancellor did not err in refusing order for production where record showed that employee was employed by individual as a farm laborer and, therefore, not entitled to benefits under the statute, evidence of the stockholders and employees of the corporation in such case being irrelevant. Board of Review v. Williams, 195 Miss. 618, 15 So. 2d 48 (1943).

In proceeding by board of review for order compelling an individual to produce stock books and payrolls of corporation, wherein chancellor refused order and issued restraining order against enforcement of duces tecum writ issued by commission, restraining order properly applied against commission as against contention that commission was not a party to the proceeding, since under the statute and also under the facts of the case, the commission was so connected with the board of review that the restraining order could issue against it as a matter of proper procedure. Board of Review v. Williams, 195 Miss. 618, 15 So. 2d 48 (1943).

§ 71-5-141. Protection against self-incrimination [Repealed effective July 1, 2014].

No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda and other records before the department, the Board of Review, any referee, or any duly authorized representative of any of them, or in obedience to the subpoena of any of them in any cause or proceeding before the department, the Board of Review or an appeal tribunal, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

SOURCES: Codes, 1942, § 7417; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6l; Laws, 1952, ch. 383, § 4l; Laws, 1958, ch. 533, § 6l; Laws, 1962, ch. 564, § 3l; Laws, 2004, ch. 572, § 31; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 31; reenacted without change, Laws, 2010, ch. 559, § 30; reenacted without change, Laws, 2011, ch. 471, § 31, eff from and after July 1, 2011.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, and as amended by Laws of 2011, ch. 471, § 59, provides:

"SECTION 60. This act shall stand repealed on July 1, 2014."

Amendment Notes — The 2010 amendment reenacted the section without change. The 2011 amendment reenacted the section without change.

Cross References — Constitutional authority for privilege against self-incrimination, see Miss Const Art. 3, § 26.

JUDICIAL DECISIONS

Although Miss. Code Ann. § 71-5-19(4) clearly gave the Mississippi Employment Security Commission (MESC) the right to seek full repayment and there was not a requirement of any fraudulent intent in order to do so, the MESC's decision to seek full repayment of unemployment benefits was arbitrary and capricious, because the claimant's failure to testify did not amount to fraud. Miss. Emp. Sec. Comm'n v. Jones, 826 So. 2d 77 (Miss. 2002).

RESEARCH REFERENCES

Lawyers' Edition. Adequacy, under Federal Constitution, of immunity granted in lieu of privilege against self-incrimination-supreme court cases. 32 L. Ed. 2d 869.

§ 71-5-143. State-federal cooperation [Repealed effective July 1, 2014].

In the administration of this chapter, the department shall cooperate, to the fullest extent consistent with the provisions of this chapter, with the Social Security Board created by the Social Security Act, approved August 14, 1935, as amended; shall make such reports in such form and containing such information as the Social Security Board may from time to time require, and shall comply with such provisions as the Social Security Board may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the reasonable, valid and lawful regulations prescribed by the Social Security Board pursuant to and under the authority of the Social Security Act, governing the expenditures of such sums as may be allotted and paid to this state under Title III of the Social Security Act, as amended, for the purpose of assisting in the administration of this chapter.

Upon request therefor, the department shall furnish to any agency of the United States charged with the administration of public works, or assistance through public employment, the name, address, ordinary occupation and employment status of each recipient of benefits, and such recipient's rights to further benefits under this chapter.

SOURCES: Codes, 1942, § 7418; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6m; Laws, 1952, ch. 383, § 4m; Laws, 1958, ch. 533, § 6m; Laws, 1962, ch. 564, § 3m; Laws, 2004, ch. 572, § 32; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 32; reenacted without change, Laws, 2010, ch. 559, § 31; reenacted without change, Laws, 2011, ch. 471, § 32, eff from and after July 1, 2011.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, and as amended by Laws of 2011, ch. 471, § 59, provides:

"SECTION 60. This act shall stand repealed on July 1, 2014."

Amendment Notes — The 2010 amendment reenacted the section without change.

The 2011 amendment reenacted the section without change.

Federal Aspects — Social Security Act generally, see 42 USCS §§ 301 et seq.

Title III of the Social Security Act, see 42 USCS §§ 501 et seq.

RESEARCH REFERENCES

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation § 1.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 283, 284, 286.

§ 71-5-145. 1235 Echelon Parkway named the Henry J. Kirksey Building.

The building located at 1235 Echelon Parkway in Jackson, Mississippi, and in which the Mississippi Department of Employment Security is housed, shall be named the Henry J. Kirksey Building. The Department of Finance and Administration shall prepare a distinctive plaque, to be placed in a prominent place within the Henry J. Kirksey Building, which states the background, accomplishments and service to the state of the Honorable Henry J. Kirksey.

SOURCES: Laws, 2007, ch. 339, § 2, eff from and after passage (approved Mar. 14, 2007.)

ARTICLE 5.

EMPLOYMENT SERVICE.

SEC.
71-5-201. State employment service [Repealed effective July 1, 2014].
71-5-203. Financing.

§ 71-5-201. State employment service [Repealed effective July 1, 2014].

The Mississippi State Employment Service is established in the Mississippi Department of Employment Security, Office of the Governor. The department, in the conduct of such service, shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this article and for the purpose of performing such functions as are within the purview of the act of Congress entitled "An act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes" (29 USCS Section 49 et seq.). Any existing free public employment offices maintained by the state but not heretofore under the jurisdiction of the department shall be transferred to the jurisdiction of the department, and upon such transfer all duties and powers conferred upon any other department, agency or officers of this state relating to the establishment, maintenance and operation of free public employment offices shall be vested in the department. The Mississippi State Employment Service shall be administered by the department, which is charged with the duty to cooperate with any official or agency of the United States having powers or duties under the provisions of the act of Congress, as amended, and to do and perform all things necessary to secure to this state the benefits of that act of Congress, as amended, in the promotion and maintenance of a system of public employment offices. The provisions of that act of Congress, as amended, are accepted by this state, in conformity with 29 USCS Section 49c, and this state will observe and comply with the requirements thereof. The department is designated and constituted the agency of this state for the purposes of that act. The department may cooperate with or enter into agreements with the Railroad Retirement Board or veteran's organization with respect to the establishment, maintenance and use of free employment service facilities.

SOURCES: Codes, 1942, § 7419; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 3; Laws, 1948, ch. 412, § 7a; Laws, 1971, ch. 519, § 12; Laws, 1972, ch. 425, § 1; Laws, 2004, ch. 572, § 33; reenacted without change, Laws, 2008, 1st Ex

Sess, ch. 30, § 33; reenacted without change, Laws, 2010, ch. 559, § 32; reenacted without change, Laws, 2011, ch. 471, § 33, eff from and after July 1, 2011.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference. The reference to "Section 29 U.S.C.S. Section 49c" was changed to "29 U.S.C.S. Section 49c". The Joint Committee ratified the correction at its May 20, 1998, meeting.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, and as amended by Laws of 2011, ch. 471, § 59, provides:

"SECTION 60. This act shall stand repealed on July 1, 2014."

Amendment Notes — The 2010 amendment reenacted the section without change.

The 2011 amendment reenacted the section without change.

Cross References — Statutory regulation of employment generally, see §§ 71-1-17 et seq.

Employment practices of public service corporations, see §§ 77-9-725 et seq.

Federal Aspects — Wagner-Peyser Act, see 29 USCS §§ 49 et seq.

RESEARCH REFERENCES

Am Jur. 27 Am. Jur. 2d, Employment Agencies § 27.

§ 71-5-203. Financing.

All moneys received by this state under the said act of Congress, as amended, shall be paid into the employment security administration fund. Said moneys are hereby made available to the commission to be expended as provided by this article and by said act of Congress, upon voucher signed by the executive director or such other officer or employee of the commission as it may authorize so to do. For the purpose of establishing and maintaining free public employment offices, the commission is authorized to enter into agreements with the railroad retirement board or any other agency of the United States charged with the administration of an unemployment compensation law, with any political subdivision of this state, or with any private, non-profit organization; and as a part of any such agreement, the commission may accept moneys, services, or quarters as a contribution to the employment security administration fund.

SOURCES: Codes, 1942, § 7420; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 3; Laws, 1948, ch. 412, § 7b, eff July 1, 1948.

Cross References — Funds for administration, see §§ 71-5-111, 71-5-113.

Federal Aspects — Wagner-Peyser Act, see 29 USCS §§ 49 et seq.

RESEARCH REFERENCES

Am Jur. 27 Am. Jur. 2d, Employment Agencies §§ 26 et seq.

ARTICLE 7.

CONTRIBUTIONS.

SEC.	
71-5-351.	Payment of contributions; participation in the Mississippi Level Payment Plan (MLPP).
71-5-353.	Rate of contributions; reduction in contribution rate for certain employers; suspension of Workforce Enhancement Training contributions under certain circumstances.
71-5-355.	Modified rates.
71-5-357.	Regulations governing nonprofit organizations [Repealed effective July 1, 2014].
71-5-359.	Regulations governing state boards, instrumentalities, and political subdivisions [Repealed effective July 1, 2014].
71-5-361.	Period, election, and termination.
71-5-363.	Interest on past due contributions.
71-5-365.	Failure to make reports and pay contributions.
71-5-367.	Collection by warrant.
71-5-369.	Jeopardy assessment and warrant.
71-5-371.	Liability of sheriff for failure to execute warrant.
71-5-373.	Defaulting employer.
71-5-375.	Contributions a lien.
71-5-377.	Priorities under legal dissolutions or distributions.
71-5-379.	Collection by suit.
71-5-381.	No injunction allowed to restrain collection.
71-5-383.	Refunds.
71-5-385.	Requesting permission to file reports in special format; regulations; penalty.
71-5-387.	Contributions to the unemployment compensation fund by certain Indian tribes under Federal Unemployment Tax Act.
71-5-389.	Setoff against tax refunds for debts owed to Mississippi Department of Employment Security; submission of debts to Department of Revenue; notice to debtor; transfer of funds to Department of Revenue; hearings; appeals; confidentiality.
71-5-391.	Use of administrative funds for payment of fees associated with receipt of electronic payments.

§ 71-5-351. Payment of contributions; participation in the Mississippi Level Payment Plan (MLPP).

(1) Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this chapter. Such contributions shall become due and be paid by each employer to the department for the fund each calendar quarter on or before the last day of the month next succeeding each calendar quarter in which the contributions accrue unless the employer has filed an election with the department to participate in the Mississippi Level Payment Plan (MLPP) and complies with the provision of the MLPP. The department may extend the due date of such contributions if the due date falls on a Saturday, Sunday or state or federal holiday. Such contributions shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ.

(2)(a) Any employer who is a newly subject employer or any employer who meets the requirements of participation in the MLPP shall be allowed one (1) participation election per year. The department may by regulation establish exceptions to this rule as appropriate. The department shall establish by regulation the requirements for computation and adjustment of compensation and shall compute the amount of payments that will be made quarterly and notify each employer before the first tax payment is due for the year. Equal payments will be made for calendar quarters ending March, June and September and settlement will be made for any overage or shortage at the time payment is due for the December quarter.

(b) An employer who meets the following criteria may participate in the MLPP:

(i) The employer has not been delinquent in filing unemployment reports or paying unemployment taxes to the department during the last two (2) calendar years and must make current all other delinquent unemployment taxes and reports;

(ii) The employer has been an employer subject to the unemployment laws of the State of Mississippi, or in accordance with department regulations regarding MLPP, for at least twelve (12) months prior to the year the employer starts participating;

(iii) The employer must agree to file reports through the department's online system or other agency prescribed electronic facility and pay electronically;

(iv) The employer remains current in filing and paying taxes; and

(v) The employer must make the election by April 1 of the year.

(c) Employers who participate in the MLPP and pay their contribution by bank draft shall utilize the pay schedule provided for in this paragraph. The pay schedule shall be as follows:

(i) January to March due date May 15;

(ii) April to June due date August 15;

(iii) July to September due date November 15; and

(iv) October to December due date January 31.

(d) In the event the computed Size of Fund Index (SOFI) for any rate year computation falls below one percent (1.0%), the additional fifteen (15) days' delay provided for bank draft customers will be suspended for that year.

(3) For purposes of payment of contributions on remuneration paid to individuals, if two (2) or more related corporations concurrently employ the same individual and compensate such individual through a common paymaster which is one of such corporations, each such corporation shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual such amounts actually disbursed to such individual by another of such corporations.

In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to One-half Cent (½¢) or more, in which case it shall be increased to One Cent (1¢).

(4) For the purposes of this section and Sections 71-5-353, 71-5-357 and 71-5-359, taxable wages shall not include that part of remuneration which, after remuneration equal to Seven Thousand Dollars ($7,000.00) through December 31, 2010, and Fourteen Thousand Dollars ($14,000.00) thereafter, has been paid in a calendar year to an individual by an employer or his predecessor with respect to employment during any calendar year, is paid to such individual by such employer during such calendar year unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state employment fund. For the purposes of this section, the term "employment" shall include service constituting employment under any unemployment compensation law of another state.

(5) Absent evidence of willful or fraudulent attempt to avoid taxation, the effective date of liability of an employer or assessment of liability for covered employment against an employer shall not occur for any period preceding the three (3) calendar years before the date of registration or assessment, unless said three-year limitations period is waived by the employer.

SOURCES: Codes, 1942, § 7390; Laws, 1940, ch. 295, § 5; Laws, 1948, ch. 412, § 4a; Laws, 1950, ch. 454, § 1a; Laws, 1952, ch. 383, § 2a; Laws, 1956, ch. 404, § 2a; Laws, 1958, ch. 533, § 5a; Laws, 1962, ch. 564, § 2a; Laws, 1964, ch. 442, § 2a; Laws, 1971, ch. 519, § 6; Laws, 1977, ch. 497, § 2; Laws, 1983, ch. 371, § 2; Laws, 1985, ch. 413; Laws, 1998, ch. 331, § 2; Laws, 2001, ch. 431, § 1; Laws, 2005, ch. 437, § 4; Laws, 2010, ch. 504, § 1, eff from and after passage (approved Apr. 8, 2010.)

Editor's Note — Laws of 1977, ch. 497, § 10, provides:

"SECTION 10. In the event the provisions of P.L. 94-566, the Unemployment Compensation Amendments of 1976, which mandate unemployment insurance coverage for state and local government employees, are declared unconstitutional, the amendments, which mandate unemployment insurance coverage for state and local government employees, adopted to Sections 71-5-11, 71-5-351, 71-5-355, 71-5-357, 71-5-359, 71-5-361, 71-5-511, 71-5-513 and 71-5-541, Mississippi Code of 1972, at the 1977 Regular Session of the Legislature shall stand repealed."

Amendment Notes — The 2010 amendment added the subsection designations; in the second sentence in (1), added the language beginning "unless the employer has filed an election" through to the end; added (2); in (4), inserted "71-5-357 and 71-5-359" and "through December 31, 2010, and Fourteen Thousand Dollars ($14,000.00) thereafter"; and made a minor stylistic change in (5).

Cross References — Definition of "payroll" as related to "wages", see § 71-5-355.

Regulations governing payment of benefits to employees of nonprofit organizations, see § 71-5-357.

Provisions relative to the obligations of state boards, state agencies, and political subdivisions under the Mississippi Unemployment Compensation Law, see § 71-5-359.

JUDICIAL DECISIONS

1. In general.

An unemployment compensation claimant was not entitled to benefits since excessive garnishments upon his wages constituted "misconduct" connected with his work under § 71-5-513(A)(2), in accordance with the public policy stated in § 71-5-3, the implementation of which is accomplished through contributions of all covered employers into the state employment fund pursuant to §§ 71-5-111 and 71-5-351. Mississippi Emp. Sec. Comm'n v. Borden, Inc., 451 So. 2d 222 (Miss. 1984).

Where a worker was employed by two separate employers, a contributing employer within the meaning of § 71-5-351, and a reimbursing employer within the meaning of § 71-5-357, the reimbursing employer, a school district, was required to reimburse the state for a pro rata share of benefits paid under § 71-5-357(c)(i), even though it continued to employ the worker on a part-time basis. McLaurin v. Mississippi Emp. Sec. Comm'n, 435 So. 2d 1170 (Miss. 1983).

The exemption of credit unions paying a privilege tax from all other taxation does not embrace contributions to the unemployment insurance fund. Mutual Credit Union v. Mississippi Emp. Sec. Comm'n, 241 Miss. 432, 131 So. 2d 444 (1961).

A relationship of master and servant existed and the plumbing company was liable for state unemployment taxes where it engaged a laborer to unload cars, this unloading of cars was part of the company's regular business, the laborer worked at the job at regular intervals, the company had the right to control the laborer, the company had employed such laborer for at least part of a day in each of twenty different weeks during the year, and had also employed seven other regular employees during the year. Mississippi Emp. Sec. Comm'n v. Plumbing Whsle. Co, 219 Miss. 724, 69 So. 2d 814 (1954).

The legislative intent of the test for the employer-employee relationship under this statute is obtained by an application of the principles of the common law of master and servant. Mississippi Emp. Sec. Comm'n v. Heidelberg Hotel Co., 211 Miss. 104, 51 So. 2d 47 (1951).

Where a hotel hired an orchestra under a contract which designated the hotel as an employer and the musicians as employees, but the hotel exercises no control over the operation of the orchestra, the musicians were not employees of the hotel and the hotel was not liable for the state unemployment taxes. Mississippi Emp. Sec. Comm'n v. Heidelberg Hotel Co., 211 Miss. 104, 51 So. 2d 47 (1951).

RESEARCH REFERENCES

ALR. Service charges, by hotels or restaurants and later distributed to employees, as "wages" upon which federal or state unemployment taxes or contributions are required to be paid. 83 A.L.R.2d 1024.

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation §§ 15 et seq., 18 et seq.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 284, 287.

§ 71-5-353. Rate of contributions; reduction in contribution rate for certain employers; suspension of Workforce Enhancement Training contributions under certain circumstances.

(1) Each employer shall pay contributions equal to five and four-tenths percent (5.4%) of taxable wages paid by him each calendar year, except as may be otherwise provided in Section 71-5-361 and except that each newly subject employer shall pay contributions at the rate of two and four-tenths percent (2.4%) of taxable wages through December 31, 2010, and thereafter one percent (1%) of taxable wages, for his first year of liability, one and one-tenth percent (1.1%) of taxable wages for his second year of liability, and one and two-tenths percent (1.2%) of taxable wages for his third and subsequent years of liability unless the employer's experience-rating record has been chargeable

throughout at least the twelve (12) consecutive calendar months ending on the most recent computation date at the time the rate for a year is determined; thereafter the employer's contribution rate shall be determined in accordance with the provisions of Section 71-5-355.

(2) From and after January 1, 2005, through December 31, 2009, contribution rates assigned to employers by the department, as determined pursuant to Sections 71-5-351, 71-5-353 and 71-5-355, shall be reduced by three-tenths of one percent (.3%). Such reduction shall only apply to employers whose contribution rate, determined in accordance with Sections 71-5-353 and 71-5-355, is equal to or less than five and four-tenths percent (5.4%), and shall include a three-tenths of one percent (.3%) reduction to the rate as a result of violation of provisions of this chapter. The reduction in rates provided for herein shall not apply to state boards, instrumentalities and political subdivisions of the State of Mississippi referred to in Sections 71-5-357 and 71-5-359, or to nonprofit employers providing reimbursement to the department for the unemployment fund pursuant to Section 71-5-357(a).

(3)(a) From and after January 1, 2005, through December 31, 2009, the workforce enhancement contributions shall be applied at a rate of three-tenths of one percent (.3%) upon the taxable wages, however, the workforce enhancement contribution shall not be applied to state boards, instrumentalities and political subdivisions of the State of Mississippi referred to in Sections 71-5-357 and 71-5-359, or to nonprofit employers providing reimbursement to the department for the unemployment fund pursuant to Section 71-5-357(a).

(b) There is hereby created in the Treasury of the State of Mississippi a special fund to be known as the "Mississippi Workforce Enhancement Training Fund," which consists of funds collected pursuant to this subsection (3) and subsection (4) of this section. Funds collected shall initially be deposited into the Mississippi Department of Employment Security tax bank account for clearing contribution collections and subsequently transferred to the Mississippi Workforce Enhancement Training Fund holding account described in Section 71-5-453. In the event any employer pays an amount insufficient to cover the total contributions due, the amounts due shall be satisfied in the following order:

(i) Unemployment contributions;
(ii) Workforce enhancement training contributions;
(iii) Interest and damages; then
(iv) Legal and processing costs.

The amount of contributions due for any period will be the amount due according to the actual computations unless the employer is participating in the MLPP. In that event, the amount due is the MLPP amount computed by the department.

Cost of collection and administration of the workforce enhancement training contribution shall be allocated based on a plan approved by the United States Department of Labor (USDOL) and shall be paid to the Mississippi Department of Employment Security semiannually by the State Board for

Community and Junior Colleges for periods ending in December and June of each year. Payment shall be made to the department no later than sixty (60) days after the billing date.

(c) All monies collected will be initially deposited into the Mississippi Department of Employment Security bank account for clearing contribution collections and subsequently transferred to the Mississippi Workforce Enhancement Training Fund holding account and will be held by the Mississippi Department of Employment Security in such account for a period of not less than sixty (60) days. After such period, funds shall be transferred within thirty (30) days to the Mississippi Workforce Enhancement Training Fund in a manner determined by the department. Interest earnings or interest credits on deposit amounts shall be retained in the holding account to pay the banking costs of the account. If after the period of twelve (12) months interest earnings less banking costs exceeds Ten Thousand Dollars ($10,000.00), such excess amounts shall be transferred to the Mississippi Workforce Enhancement Training Fund treasury account within thirty (30) days. Such transfers shall occur once annually, during the month of January.

(d) All enforcement procedures for the collection of delinquent contributions contained in Sections 71-5-363 through 71-5-383 shall be applicable in all respects for collections of delinquent contributions designated for the Unemployment Compensation Fund and the Mississippi Workforce Enhancement Training Fund.

(e) All monies deposited into the Mississippi Workforce Enhancement Training Fund shall be utilized exclusively by the State Board for Community and Junior Colleges in accordance with the Workforce Training Act of 1994 (Section 37-153-1 et seq.) and the annual plan developed by the State Workforce Investment Board for the following purposes: to provide training at no charge to employers and employees in order to enhance employee productivity. Such training may be subject to a minimal administrative fee to be paid from the Mississippi Workforce Enhancement Training Fund as established by the State Workforce Investment Board subject to the advice of the State Board for Community and Junior Colleges. The initial priority of these funds shall be for the benefit of existing businesses located within the state. Employers may request training for existing employees and/or newly hired employees from the State Board for Community and Junior Colleges. The State Board for Community and Junior Colleges will be responsible for approving the training.

(4) The following procedure shall apply for tax years subsequent to December 31, 2009:

(a) Workforce enhancement training contributions shall be collected at a rate of three-tenths of one percent (.3%) through December 31, 2010, based upon taxable wages, and at a rate of fifteen one-hundredths of one percent (.15%) thereafter, based upon taxable wages. Training contributions shall be reduced by the amount necessary to prevent any employer from having a combined rate greater than five and four-tenths percent (5.4%).

(b) All workforce enhancement training contributions collected shall be deposited initially into the Mississippi Department of Employment Security bank account for clearing contribution collections and shall within two (2) business days be transferred to the Workforce Enhancement Training Fund holding account. Any workforce enhancement training contribution transactions from the Mississippi Department of Employment Security account for clearing contribution collections that are deposited into the Workforce Enhancement Training Fund holding account and are not honored by a financial institution will be transferred back to the Mississippi Department of Employment Security account for clearing contribution collections out of funds in the Workforce Enhancement Training Fund holding account.

(c) For rate years subsequent to December 31, 2009, suspension of the workforce enhancement training contributions required pursuant to this subsection (4) shall occur if the insured unemployment rate exceeds an average of five and five-tenths percent (5.5%) for the three (3) consecutive months immediately preceding the effective date of the new rate year and shall remain suspended throughout the duration of that rate year. Such suspension shall continue until such time as the three (3) consecutive months immediately preceding the effective date of any subsequent rate year has an insured unemployment rate of less than an average of four and five-tenths percent (4.5%).

(5) All collections due or accrued prior to any suspension of the Workforce Enhancement Training Fund will be collected based upon the law at the time the contributions accrued, regardless of when they are actually due or collected.

SOURCES: Codes, 1942, § 7391; Laws, 1940, ch. 295, § 5; Laws, 1948, ch. 412, § 4b; Laws, 1950, ch. 454, § 1b; Laws, 1952, ch. 383, § 2b; Laws, 1956, ch. 404, § 2b; Laws, 1958, ch. 533, § 5b; Laws, 1962, ch. 564, § 2b; Laws, 1964, ch. 442, § 2b; Laws, 1971, ch. 519, § 7; Laws, 1979, ch. 465, § 1; Laws, 1984, ch. 301, § 1; Laws, 1998, ch. 331, § 3; Laws, 1998, ch. 491, § 2; Laws, 2005, ch. 437, § 1; Laws, 2010, ch. 302, § 1; Laws, 2010, ch. 504, § 2, eff from and after passage (approved Apr. 8, 2010.)

Joint Legislative Committee Note — Section 3 of ch. 331, Laws of 1998, effective from and after July 1, 1998, amended this section. Section 2 of ch. 491, Laws of 1998, effective from and after July 2, 1998, also amended this section. As set out above, this section reflects the language of Section 2 of ch. 491, Laws of 1998, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

Section 2 of ch. 504, Laws of 2010, effective upon passage (approved April 8, 2010), amended this section. Section 1 of ch. 302, Laws of 2010, effective January 1, 2010 (approved January 12, 2010), also amended this section. As set out above, this section reflects the language of Section 2 of ch. 504, Laws of 2010, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Note — Section 37-4-5 provides that the term State Board for Community and Junior Colleges, wherever it appears in the laws of Mississippi, shall mean the Mississippi Community College Board.

Amendment Notes — The first 2010 amendment (ch. 302), rewrote the section. The second 2010 amendment (ch. 504), rewrote the section.

Cross References — Payments of contributions, see § 71-5-351.

Modified rates of employer contributions, see § 71-5-355.

Regulations governing payment of benefits to employees of nonprofit organizations, see § 71-5-357.

Provisions relative to the obligations of state boards, state agencies, and political subdivisions under the Mississippi Unemployment Compensation Law, see § 71-5-359.

JUDICIAL DECISIONS

1. In general.

Printing company retained its "eligible employer" status and was entitled to lower rates than those charged to "newly subject employer" when it switched to new "employee leasing firm" to handle various payroll services for it, including reporting of wages and payment of unemployment contributions; although company had previously utilized three different "employee leasing firms," company had complete control over its employees from date of its founding ten years earlier. Clark Printing Co. v. Mississippi Emp. Sec. Comm'n, 681 So. 2d 1328 (Miss. 1996).

ATTORNEY GENERAL OPINIONS

The actions referred to in Section 71-5-353(4)(c) are ministerial in nature and there is no authority or discretion on the part of the Workforce Investment Board or the Mississippi Department of Employment Security to withhold funds which the legislature has directed be transferred to the Mississippi Workforce Enhancement Training Fund. Stonecypher, May 12, 2006, A.G. Op. 06-0182.

RESEARCH REFERENCES

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation §§ 15 et seq., 18 et seq.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 284, 287.

§ 71-5-355. Modified rates.

(1) As used in this section, the following words and phrases shall have the following meanings, unless the context clearly requires otherwise:

(a) "Tax year" means any period beginning on January 1 and ending on December 31 of a year.

(b) "Computation date" means June 30 of any calendar year immediately preceding the tax year during which the particular contribution rates are effective.

(c) "Effective date" means January 1 of the tax year.

(d) Except as hereinafter provided, "payroll" means the total of all wages paid for employment by an employer as defined in Section 71-5-11, subsection I, plus the total of all remuneration paid by such employer excluded from the definition of wages by Section 71-5-351. For the computation of modified rates, "payroll" means the total of all wages paid for employment by an employer as defined in Section 71-5-11, subsection I.

(e) For the computation of modified rates, "eligible employer" means an employer whose experience-rating record has been chargeable with benefits throughout the thirty-six (36) consecutive calendar-month period ending on the computation date, except that any employer who has not been subject to the Mississippi Employment Security Law for a period of time sufficient to meet the thirty-six (36) consecutive calendar-month requirement shall be an eligible employer if his experience-rating record has been chargeable throughout not less than the twelve (12) consecutive calendar-month period ending on the computation date. No employer shall be considered eligible for a contribution rate less than five and four-tenths percent (5.4%) with respect to any tax year, who has failed to file any two (2) quarterly reports within the qualifying period by September 30 following the computation date. No employer or employing unit shall be eligible for a contribution rate of less than five and four-tenths percent (5.4%) for the tax year in which the employing unit is found by the department to be in violation of Section 71-5-19(2) or (3) and for the next two (2) succeeding tax years. No representative of such employing unit who was a party to a violation as described in Section 71-5-19(2) or (3), if such representative was or is an employing unit in this state, shall be eligible for a contribution rate of less than five and four-tenths percent (5.4%) for the tax year in which such violation was detected by the department and for the next two (2) succeeding tax years.

(f) With respect to any tax year, "reserve ratio" means the ratio which the total amount available for the payment of benefits in the Unemployment Compensation Fund, excluding any amount which has been credited to the account of this state under Section 903 of the Social Security Act, as amended, and which has been appropriated for the expenses of administration pursuant to Section 71-5-457 whether or not withdrawn from such account, on October 31 (close of business) of each calendar year bears to the aggregate of the taxable payrolls of all employers for the twelve (12) calendar months ending on June 30 next preceding.

(g) "Modified rates" means the rates of employer contributions determined under the provisions of this chapter and the rates of newly subject employers, as provided in Section 71-5-353.

(h) For the computation of modified rates, "qualifying period" means a period of not less than the thirty-six (36) consecutive calendar months ending on the computation date throughout which an employer's experience-rating record has been chargeable with benefits; except that with respect to any eligible employer who has not been subject to this article for a period of time sufficient to meet the thirty-six (36) consecutive calendar-month requirement, "qualifying period" means the period ending on the computation date throughout which his experience-rating record has been chargeable with benefits, but in no event less than the twelve (12) consecutive calendar-month period ending on the computation date throughout which his experience-rating record has been so chargeable.

(i) The "exposure criterion" (EC) is defined as the cash balance of the Unemployment Compensation Fund which is available for the payment of benefits as of November 16 of each calendar year or the next working day if November 16 falls on a holiday or a weekend, divided by the total wages, exclusive of wages paid by all state agencies, all political subdivisions, reimbursable nonprofit corporations, and tax-exempt public service employment, for the twelve-month period ending June 30 immediately preceding such date. The EC shall be computed to four (4) decimal places and rounded up if any fraction remains.

(j) The "cost rate criterion" (CRC) is defined as follows: Beginning with January 1974, the benefits paid for the twelve-month period ending December 1974 are summed and divided by the total wages for the twelve-month period ending on June 30, 1975. Similar ratios are computed by subtracting the earliest month's benefit payments and adding the benefits of the next month in the sequence and dividing each sum of twelve (12) months' benefits by the total wages for the twelve-month period ending on the June 30 which is nearest to the final month of the period used to compute the numerator. If December is the final month of the period used to compute the numerator, then the twelve-month period ending the following June 30 will be used for the denominator. Benefits and total wages used in the computation of the cost rate criterion shall exclude all benefits and total wages applicable to state agencies, political subdivisions, reimbursable nonprofit corporations, and tax-exempt PSE employment.

The CRC shall be computed as the average for the highest monthly value of the cost rate criterion computations during each of the economic cycles since the calendar year 1974 as defined by the National Bureau of Economic Research. The CRC shall be computed to four (4) decimal places and any remainder shall be rounded up.

The CRC shall be adjusted only through annual computations and additions of future economic cycles.

(k) "Size of fund index" (SOFI) is defined as the ratio of the exposure criterion (EC) to the cost rate criterion (CRC). For years following December 31, 2009, the target size of fund index will be fixed at 1.0. If the insured unemployment rate (IUR) exceeds a four and five-tenths percent (4.5%) average for the most recent completed July to June period, the target SOFI will be .8 and will remain at that level until the computed SOFI (the average exposure criterion of the current year and the preceding year divided by the average cost rate criterion) equals 1.0 or the average IUR falls to four and five-tenths percent (4.5%) or less for any period July to June. However, if the IUR falls below two and five-tenths percent (2.5%) for any period July to June the target SOFI shall be 1.2 until such time as the computed SOFI is equal to or greater than 1.0 or the IUR is equal to or greater than two and five-tenths percent (2.5%), at which point the target SOFI shall return to 1.0.

(*l*) No employer's contribution rate shall exceed five and four-tenths percent (5.4%), nor be less than four-tenths of one percent (.4%). However, from and after January 1, 2005, through December 31, 2009, no employer's unemployment contribution rate shall be less than one-tenth of one percent (.1%). For years subsequent to calendar year 2010 the general experience rate in no event shall be less than two-tenths of one percent (.2%). For any year the general experience rate computes as an amount less than two-tenths of one percent (.2%) the general experience rate shall be established at two-tenths of one percent (.2%).

(m) The term "general experience rate" has the same meaning as the minimum tax rate.

(2) Modified rates:

(a) For any tax year, when the reserve ratio on the preceding November 1, in the case of any tax year, equals or exceeds four percent (4%), the modified rates, as hereinafter prescribed, shall be in effect. In computation of this reserve ratio, any remainder shall be rounded down.

(b) Modified rates shall be determined for the tax year for each eligible employer on the basis of his experience-rating record in the following manner:

(i) The department shall maintain an experience-rating record for each employer. Nothing in this chapter shall be construed to grant any employer or individuals performing services for him any prior claim or rights to the amounts paid by the employer into the fund.

(ii) Benefits paid to an eligible individual shall be charged against the experience-rating record of his base period employers in the proportion to which the wages paid by each base period employer bears to the total wages paid to the individual by all the base period employers, provided that benefits shall not be charged to an employer's experience-rating record if the department finds that the individual:

1. Voluntarily left the employ of such employer without good cause attributable to the employer;

2. Was discharged by such employer for misconduct connected with his work;

3. Refused an offer of suitable work by such employer without good cause, and the department further finds that such benefits are based on wages for employment for such employer prior to such voluntary leaving, discharge or refusal of suitable work, as the case may be;

4. Had base period wages which included wages for previously uncovered services as defined in Section 71-5-511(e) to the extent that the Unemployment Compensation Fund is reimbursed for such benefits pursuant to Section 121 of Public Law 94-566;

5. Extended benefits paid under the provisions of Section 71-5-541 which are not reimbursable from federal funds shall be charged to the experience-rating record of base period employers;

6. Is still working for such employer on a regular part-time basis under the same employment conditions as hired. Provided, however, that benefits shall be charged against an employer if an eligible individual is paid benefits who is still working for such employer on a part-time "as-needed" basis;

7. Was hired to replace a United States serviceman or servicewoman called into active duty and was laid off upon the return to work by that serviceman or servicewoman, unless such employer is a state agency or other political subdivision or instrumentality of the state;

8. Was paid benefits during any week while in training with the approval of the department, under the provisions of Section 71-5-513B,

or for any week while in training approved under Section 236(a)(1) of the Trade Act of 1974, under the provisions of Section 71-5-513C; or

9. Is not required to serve the one-week waiting period as described in Section 71-5-505(2). In that event, only the benefits paid in lieu of the waiting period week may be noncharged.

(iii) The department shall compute a benefit ratio for each eligible employer, which shall be the quotient obtained by dividing the total benefits charged to his experience-rating record during the period his experience-rating record has been chargeable, but not less than the twelve (12) consecutive calendar-month period nor more than the thirty-six (36) consecutive calendar-month period ending on the computation date, by his total taxable payroll for the same period on which all contributions due have been paid on or before the September 30 immediately following the computation date. Such benefit ratio shall be computed to the tenth of a percent (.1%), rounding any remainder to the next higher tenth.

The following table shall be applied to reduce contribution rates from and after January 1, 2005, through December 31, 2009, and is not intended for use for any rate years subsequent to December 31, 2009:

Benefit Ratio	Individual Experience Rate:
Benefit Ratio	Individual Experience Rate:
0.0%	- 0.3%
0.1	- 0.2
0.2	- 0.10
0.3	0.0
0.4	0.1
0.5	0.2
0.6	0.3
0.7	0.4
0.8	0.5
0.9	0.6
1.0	0.7
1.1	0.8
1.2	0.9
1.3	1.0
1.4	1.1
1.5	1.2
1.6	1.3
1.7	1.4
1.8	1.5
1.9	1.6
2.0	1.7
2.1	1.8
2.2	1.9
2.3	2.0
2.4	2.1
2.5	2.2
2.6	2.3
2.7	2.4
2.8	2.5
2.9	2.6
3.0	2.7

Benefit Ratio	Individual Experience Rate:
3.1	2.8
3.2	2.9
3.3	3.0
3.4	3.1
3.5	3.2
3.6	3.3
3.7	3.4
3.8	3.5
3.9	3.6
4.0	3.7
4.1	3.8
4.2	3.9
4.3	4.0
4.4	4.1
4.5	4.2
4.6	4.3
4.7	4.4
4.8	4.5
4.9	4.6
5.0	4.7
5.1	4.8
5.2	4.9
5.3	5.0
5.4	5.1
5.5	5.2
5.6	5.3
5.7 and above	5.4

(iv)1. The unemployment insurance contribution rate for each eligible employer shall be the sum of two (2) rates: his individual experience rate in the range from zero percent (0%) to five and four-tenths percent (5.4%), plus a general experience rate. In no event shall the resulting rate be in excess of five and four-tenths percent (5.4%), however it is the intent of this section to provide the ability for employers to have a tax rate, the general experience rate plus the individual experience rate, of up to five and four-tenths percent (5.4%).

2. The employer's individual experience rate shall be equal to his benefit ratio as computed under subsection (2)(b)(iii) above.

3. The general experience rate shall be determined in the following manner: The department shall determine annually, for the thirty-six (36) consecutive calendar-month period ending on the computation date, the amount of benefits which were not charged to the record of any employer and of benefits which were ineffectively charged to the employer's experience-rating record. For the purposes of this item 3, the term "ineffectively charged benefits" shall include:

a. The total of the amounts of benefits charged to the experience-rating records of all eligible employers which caused their benefit ratios to exceed five and four-tenths percent (5.4%);

b. The total of the amounts of benefits charged to the experience-rating records of all ineligible employers which would cause their benefit ratios to exceed five and four-tenths percent (5.4%) if they were eligible employers; and

c. The total of the amounts of benefits charged or chargeable to the experience-rating record of any employer who has discontinued his business or whose coverage has been terminated within such period; provided, that solely for the purposes of determining the amounts of ineffectively charged benefits as herein defined, a "benefit ratio" shall be computed for each ineligible employer, which shall be the quotient obtained by dividing the total benefits charged to his experience-rating record throughout the period ending on the computation date, during which his experience-rating record has been chargeable with benefits, by his total taxable payroll for the same period on which all contributions due have been paid on or before the September 30 immediately following the computation date; and provided further, that such benefit ratio shall be computed to the tenth of one percent (.1%) and any remainder shall be rounded to the next higher tenth.

The ratio of the sum of these amounts (subsection (2)(b)(iv)3a, b and c) to the taxable wages paid during the same period divided by all eligible employers whose benefit ratio did not exceed five and four-tenths percent (5.4%), computed to the next higher tenth of one percent (.1%), shall be the general experience rate.

4. The general experience rate shall be adjusted by use of the size of fund index factor. This factor may be positive or negative, and shall be determined as follows: From the target SOFI, as defined in subsection (1)(k) of this section, subtract the simple average of the current and preceding years' exposure criterions divided by the cost rate criterion, as defined in subsection (1)(j) of this section. The result is then multiplied by the product of the CRC, as defined in subsection (1)(j) of this section, and total wages for the twelve-month period ending June 30 divided by the taxable wages for the twelve-month period ending June 30. This is the percentage positive or negative added to the general experience rate. The sum of the general experience rate and the trust fund adjustment factor shall be multiplied by fifty percent (50%) and this product shall be computed to one (1) decimal place, and rounded to the next higher tenth.

5. Notwithstanding any other provisions of subsection (2)(b)(iv), if the general experience rate for any tax year as computed and adjusted on the basis of the size of fund index is a negative percentage, it shall be disregarded and in no year shall the general experience rate be less than two-tenths of one percent (.2%).

6. The department shall include in its annual rate notice to employers a brief explanation of the elements of the general experience rate, and shall include in its regular publications an annual analysis of benefits not charged to the record of any employer, and of the benefit experience of employers by industry group whose benefit ratio exceeds four percent (4%), and of any other factors which may affect the size of the general experience rate.

(v) When any employing unit in any manner succeeds to or acquires the organization, trade, business or substantially all the assets thereof of an employer, excepting any assets retained by such employer incident to the liquidation of his obligations, whether or not such acquiring employing unit was an employer within the meaning of Section 71-5-11, subsection I, prior to such acquisition, and continues such organization, trade or business, the experience-rating and payroll records of the predecessor employer shall be transferred as of the date of acquisition to the successor employer for the purpose of rate determination.

(vi) When any employing unit succeeds to or acquires a distinct and severable portion of an organization, trade or business, the experience-rating and payroll records of such portion, if separately identifiable, shall be transferred to the successor upon:

1. The mutual consent of the predecessor and the successor;
2. Approval of the department;
3. Continued operation of the transferred portion by the successor after transfer; and
4. The execution and the filing with the department by the predecessor employer of a waiver relinquishing all rights to have the experience-rating and payroll records of the transferred portion used for the purpose of determining modified rates of contribution for such predecessor.

(vii) If the successor was an employer subject to this chapter prior to the date of acquisition, it shall continue to pay contributions at the rate applicable to it from the date the acquisition occurred until the end of the then current tax year. If the successor was not an employer prior to the date of acquisition, it shall pay contributions at the rate applicable to the predecessor or, if more than one (1) predecessor and the same rate is applicable to both, the rate applicable to the predecessor or predecessors, from the date the acquisition occurred until the end of the then current tax year. If the successor was not an employer prior to the date the acquisition occurred and simultaneously acquires the businesses of two (2) or more employers to whom different rates of contributions are applicable, it shall pay contributions from the date of the acquisition until the end of the current tax year at a rate computed on the basis of the combined experience-rating and payroll records of the predecessors as of the computation date for such tax year. In all cases the rate of contributions applicable to such successor for each succeeding tax year shall be computed on the basis of the combined experience-rating and payroll records of the successor and the predecessor or predecessors.

(viii) The department shall notify each employer quarterly of the benefits paid and charged to his experience-rating record; and such notification, in the absence of an application for redetermination filed within thirty (30) days after the date of such notice, shall be final, conclusive and binding upon the employer for all purposes. A redetermination, made after notice and opportunity for a fair hearing, by a hearing officer designated by the department who shall consider and decide these and related applications and protests; and the finding of fact in connection therewith may be introduced into any subsequent administrative or judicial proceedings involving the determination of the rate of contributions of any employer for any tax year, and shall be entitled to the same finality as is provided in this subsection with respect to the findings of fact in proceedings to redetermine the contribution rate of an employer.

(ix) The department shall notify each employer of his rate of contribution as determined for any tax year as soon as reasonably possible after September 1 of the preceding year. Such determination shall be final, conclusive and binding upon such employer unless, within thirty (30) days after the date of such notice to his last known address, the employer files with the department an application for review and redetermination of his contribution rate, setting forth his reasons therefor. If the department grants such review, the employer shall be promptly notified thereof and shall be afforded an opportunity for a fair hearing by a hearing officer designated by the department who shall consider and decide these and related applications and protests; but no employer shall be allowed, in any proceeding involving his rate of contributions or contribution liability, to contest the chargeability to his account of any benefits paid in accordance with a determination, redetermination or decision pursuant to Sections 71-5-515 through 71-5-533 except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for him, and then only in the event that he was not a party to such determination, redetermination, decision or to any other proceedings provided in this chapter in which the character of such services was determined. The employer shall be promptly notified of the denial of this application or of the redetermination, both of which shall become final unless, within ten (10) days after the date of notice thereof, there shall be an appeal to the department itself. Any such appeal shall be on the record before said designated hearing officer, and the decision of said department shall become final unless, within thirty (30) days after the date of notice thereof to the employer's last known address, there shall be an appeal to the Circuit Court of the First Judicial District of Hinds County, Mississippi, in accordance with the provisions of law with respect to review of civil causes by certiorari.

(3) Notwithstanding any other provision of law, the following shall apply regarding assignment of rates and transfers of experience:

(a)(i) If an employer transfers its trade or business, or a portion thereof, to another employer and, at the time of the transfer, there is substantially common ownership, management or control of the two (2) employers, then the unemployment experience attributable to the transferred trade or business shall be transferred to the employer to whom such business is so transferred. The rates of both employers shall be recalculated and made effective on January 1 of the year following the year the transfer occurred.

(ii) If, following a transfer of experience under subparagraph (i) of this paragraph (a), the department determines that a substantial purpose of the transfer of trade or business was to obtain a reduced liability of contributions, then the experience-rating accounts of the employers involved shall be combined into a single account and a single rate assigned to such account.

(b) Whenever a person who is not an employer or an employing unit under this chapter at the time it acquires the trade or business of an employer, the unemployment experience of the acquired business shall not be transferred to such person if the department finds that such person acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions. Instead, such person shall be assigned the new employer rate under Section 71-5-353. In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the department shall use objective factors which may include the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how long such business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

(c)(i) If a person knowingly violates or attempts to violate paragraph (a) or (b) of this subsection or any other provision of this chapter related to determining the assignment of a contribution rate, or if a person knowingly advises another person in a way that results in a violation of such provision, the person shall be subject to the following penalties:

1. If the person is an employer, then such employer shall be assigned the highest rate assignable under this chapter for the rate year during which such violation or attempted violation occurred and the three (3) rate years immediately following this rate year. However, if the person's business is already at such highest rate for any year, or if the amount of increase in the person's rate would be less than two percent (2%) for such year, then a penalty rate of contributions of two percent (2%) of taxable wages shall be imposed for such year. The penalty rate will apply to the successor business as well as the related entity from which the employees were transferred in an effort to obtain a lower rate of contributions.

2. If the person is not an employer, such person shall be subject to a civil money penalty of not more than Five Thousand Dollars ($5,000.00). Each such transaction for which advice was given and each occurrence or reoccurrence after notification being given by the department shall be a separate offense and punishable by a separate penalty. Any such fine shall be deposited in the penalty and interest account established under Section 71-5-114.

(ii) For purposes of this paragraph (c), the term "knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.

(iii) For purposes of this paragraph (c), the term "violates or attempts to violate" includes, but is not limited to, intent to evade, misrepresentation or willful nondisclosure.

(iv) In addition to the penalty imposed by subparagraph (i) of this paragraph (c), any violation of this subsection may be punishable by a fine of not more than Ten Thousand Dollars ($10,000.00) or by imprisonment for not more than five (5) years, or by both such fine and imprisonment. This subsection shall prohibit prosecution under any other criminal statute of this state.

(d) The department shall establish procedures to identify the transfer or acquisition of a business for purposes of this subsection.

(e) For purposes of this subsection:

(i) "Person" has the meaning given such term by Section 7701(a)(1) of the Internal Revenue Code of 1986; and

(ii) "Employing unit" has the meaning as set forth in Section 71-5-11.

(f) This subsection shall be interpreted and applied in such a manner as to meet the minimum requirements contained in any guidance or regulations issued by the United States Department of Labor.

SOURCES: Codes, 1942, § 7392; Laws, 1940, ch. 295, § 5; Laws, 1948, ch. 412, § 4c; Laws, 1950, ch. 454, § 1c; Laws, 1952, ch. 383, § 2c; Laws, 1956, ch. 404, § 2c; Laws, 1958, ch. 533, § 5c; Laws, 1962, ch. 564, § 2c; Laws, 1964, ch. 442, § 2c; Laws, 1971, ch. 519, § 8; Laws, 1977, ch. 497, § 3; Laws, 1979, ch. 465, § 2; Laws, 1980, ch. 350; Laws, 1981, ch. 447, § 1; Laws, 1982, ch. 349, § 1; Laws, 1984, ch. 301, § 2; Laws, 1985, ch. 442; Laws, 1986, ch. 319, § 1; Laws, 1987, ch. 394; Laws, 1988, ch. 322, § 1; Laws, 1991, ch. 511, § 1; Laws, 1992, ch. 463, § 1; Laws, 1993, ch. 307, § 1; Laws, 1994, ch. 303, § 2; reenacted, Laws, 1995, ch. 507, § 2; Laws, 1998, ch. 331, § 4; Laws, 1999, ch. 306, § 2; Laws, 2000, ch. 412, § 2; Laws, 2005, ch. 400, § 1; Laws, 2005, ch. 437, § 2; Laws, 2007, ch. 606, § 8; Laws, 2010, ch. 302, § 2; Laws, 2010, ch. 504, § 3, eff from and after passage (approved Apr. 8, 2010.)

Joint Legislative Committee Note — Section 1 of ch. 400, Laws of 2005, effective January 1, 2005, amended this section. Section 2 of ch. 437, Laws of 2005, effective January 1, 2005, also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the June 29, 2005 meeting of the Committee.

Section 3 of ch. 504, Laws of 2010, effective upon passage, (approved April 8, 2010), amended this section. Section 2 of ch. 302, Laws of 2010, effective January 1, 2010 (approved January 12, 2010), also amended this section. As set out above, this section reflects the language of Section 3 of ch. 504, Laws of 2010, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Note — Laws of 1977, ch. 497, § 10, provides:

"SECTION 10. In the event the provisions of P.L. 94-566, the Unemployment Compensation Amendments of 1976, which mandate unemployment insurance coverage for state and local government employees, are declared unconstitutional, the amendments, which mandate unemployment insurance coverage for state and local government employees, adopted to Sections 71-5-11, 71-5-351, 71-5-355, 71-5-357, 71-5-359, 71-5-361, 71-5-511, 71-5-513 and 71-5-541, Mississippi Code of 1972, at the 1977 Regular Session of the Legislature shall stand repealed."

Amendment Notes — The first 2010 amendment (ch. 302), rewrote (1) and (2).

The second 2010 amendment (ch. 504), rewrote the section.

Cross References — Mississippi Employment Security Law, see §§ 71-5-1 et seq.

Regulations governing payment of benefits to employees of nonprofit organizations, see § 71-5-357.

Provisions relative to the obligations of state boards, state agencies, and political subdivisions under the Mississippi Unemployment Compensation Law, see § 71-5-359.

Comparable Laws from other States — Alabama Code, § 25-4-54.

Florida: Fla. Stat. § 443.131.

Louisiana Revised Statutes Annotated, § 23:1531 et seq.

Maryland: Md. Labor and Employment Code, §§ 8-601 through 8-640.

Texas Labor Code, § 204.041 et seq.

Virginia: Va. Code Annotated, §§ 60.2-525 et seq.

Federal Aspects — Section 236(a)(1) of the Trade Act of 1974, see 19 USCS 2296(a)(1).

Federal Unemployment Tax Act — credits against tax; approval of state laws, 26 USCS §§ 3302, 3304.

Section 7701(a)(1) of the Internal Revenue Code, see 26 USCS § 7701(a)(1).

Section 903 of the Social Security Act, see 42 USCS § 903.

Provisions of Section 903 of the Social Security Act, see 42 USCS § 1103.

JUDICIAL DECISIONS

1. In general.

Trial court properly upheld an order from the Mississippi Employment Security Commission, which held that a company's appeal of an order declaring that a claimant for unemployment benefits was an employee and not a part-owner was untimely, where the appeal was not filed within 10 days of the decision, as required by Miss. Code Ann. § 71-5-355(2)(b)(ix). O & J Loading Serv., LLC v. Miss. Empl. Sec. Comm'n, 971 So. 2d 597 (Miss. Ct. App. 2007), writ of certiorari dismissed by 2007 Miss. LEXIS 685 (Miss. Dec. 6, 2007).

A knit shirt manufacturer was not a successor employer of a military shirt manufacturer under § 71-5-355(2)(b)(v), for purposes of assessing the knit shirt manufacturer's unemployment rate of contributions, even though the knit shirt manufacturer was located in a building previously occupied by the military shirt manufacturer, and the knit shirt manufacturer purchased some of the military shirt manufacturer's equipment and employed some of its former employees, where the 2 companies were totally unrelated, having no common directors, officers or shareholders, the knit shirt manufacturer did not know any of the military shirt manufacturer's customers, the knit shirt manufacturer bought none of the military manufacturer's goodwill, accounts receivable, or any other assets, and the knit shirt manufacturer manufactured an entirely different product sold to entirely different types and kinds of purchasers. Prentiss Mfg. Co. v. Mississippi Emp. Sec. Comm'n, 558 So. 2d 866 (Miss. 1990).

RESEARCH REFERENCES

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation §§ 15 et seq., 18 et seq.

24 Am. Jur. Pl & Pr Forms (Rev), Unemployment Compensation, Forms 17, 18.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 284, 287.

§ 71-5-357. Regulations governing nonprofit organizations [Repealed effective July 1, 2014].

Benefits paid to employees of nonprofit organizations shall be financed in accordance with the provisions of this section. For the purpose of this section, a nonprofit organization is an organization (or group of organizations) described in Section 501(c)(3) of the Internal Revenue Code of 1954 which is exempt from income tax under Section 501(a) of such code (26 USCS Section 501).

(a) Any nonprofit organization which, under Section 71-5-11, subsection I(3), is or becomes subject to this chapter shall pay contributions under the provisions of Sections 71-5-351 through 71-5-355 unless it elects, in accordance with this paragraph, to pay to the department for the unemployment fund an amount equal to the amount of regular benefits and one-half (½) of the extended benefits paid, that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment which begin during the effective period of such election.

(i) Any nonprofit organization which becomes subject to this chapter may elect to become liable for payments in lieu of contributions for a period of not less than twelve (12) months, beginning with the date on which such subjectivity begins, by filing a written notice of its election with the department not later than thirty (30) days immediately following the date of the determination of such subjectivity.

(ii) Any nonprofit organization which makes an election in accordance with subparagraph (i) of this paragraph will continue to be liable for payments in lieu of contributions unless it files with the department a written termination notice not later than thirty (30) days prior to the beginning of the tax year for which such termination shall first be effective.

(iii) Any nonprofit organization which has been paying contributions under this chapter may change to a reimbursable basis by filing with the department, not later than thirty (30) days prior to the beginning of any tax year, a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminable by the organization for that and the next tax year.

(iv) The department may for good cause extend the period within which a notice of election or a notice of termination must be filed, and may permit an election to be retroactive.

(v) The department, in accordance with such regulations as it may prescribe, shall notify each nonprofit organization of any determination which it may make of its status as an employer, of the effective date of any election which it makes and of any termination of such election. Such determinations shall be subject to reconsideration, appeal and review in accordance with the provisions of Sections 71-5-351 through 71-5-355.

(b) Payments in lieu of contributions shall be made in accordance with the provisions of subparagraph (i) of this paragraph.

(i) At the end of each calendar quarter, or at the end of any other period as determined by the department, the department shall bill each nonprofit organization (or group of such organizations) which has elected to make payments in lieu of contributions, for an amount equal to the full amount of regular benefits plus one-half (½) of the amount of extended benefits paid during such quarter or other prescribed period that is attributable to service in the employ of such organization.

(ii) Payment of any bill rendered under subparagraph (i) of this paragraph shall be made not later than forty-five (45) days after such bill was delivered to the nonprofit organization, unless there has been an application for review and redetermination in accordance with subparagraph (v) of this paragraph.

1. All of the enforcement procedures for the collection of delinquent contributions contained in Sections 71-5-363 through 71-5-383 shall be applicable in all respects for the collection of delinquent payments due by nonprofit organizations who have elected to become liable for payments in lieu of contributions.
2. If any nonprofit organization is delinquent in making payments in lieu of contributions, the department may terminate such organization's election to make payments in lieu of contributions as of the beginning of the next tax year, and such termination shall be effective for the balance of such tax year.

(iii) Payments made by any nonprofit organization under the provisions of this paragraph shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

(iv) Payments due by employers who elect to reimburse the fund in lieu of contributions as provided in this paragraph may not be noncharged under any condition. The reimbursement must be on a dollar-for-dollar basis (One Dollar ($1.00) reimbursement for each dollar paid in benefits) in every case, so that the trust fund shall be reimbursed in full, such reimbursement to include, but not be limited to, benefits or payments erroneously or incorrectly paid, or paid as a result of a determination of eligibility which is subsequently reversed, or paid as a result of claimant fraud. However, political subdivisions who are reimbursing employers may elect to pay to the fund an amount equal to five-tenths percent (.5%) through December 31, 2010, and shall pay twenty-five one-hundredths percent (.25%) thereafter of the taxable wages paid during the calendar year with respect to employment, and those employers who so elect shall be relieved of liability for reimbursement of benefits paid under the same conditions that benefits are not charged to the experience-rating record of a contributing employer as provided in Section 71-5-355(2)(b)(ii) other than Clause 5 thereof. Benefits paid in such circumstances for which reimbursing employers are relieved of liability for reimbursement shall not be considered attributable to service in the employment of such reimbursing employer.

(v) The amount due specified in any bill from the department shall be conclusive on the organization unless, not later than fifteen (15) days after the bill was delivered to it, the organization files an application for redetermination by the department, setting forth the grounds for such application or appeal. The department shall promptly review and reconsider the amount due specified in the bill and shall thereafter issue a redetermination in any case in which such application for redetermination has been filed. Any such redetermination shall be conclusive on the organization unless, not later than fifteen (15) days after the redetermination was delivered to it, the organization files an appeal to the Circuit Court of the First Judicial District of Hinds County, Mississippi, in accordance with the provisions of law with respect to review of civil causes by certiorari.

(vi) Past due payments of amounts in lieu of contributions shall be subject to the same interest and penalties that, pursuant to Section 71-5-363, apply to past due contributions.

(c) Each employer that is liable for payments in lieu of contributions shall pay to the department for the fund the amount of regular benefits plus the amount of one-half (½) of extended benefits paid are attributable to service in the employ of such employer. If benefits paid to an individual are based on wages paid by more than one (1) employer and one or more of such employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer that is liable for such payments shall be determined in accordance with the provisions of subparagraph (i) or subparagraph (ii) of this paragraph.

(i) If benefits paid to an individual are based on wages paid by one or more employers that are liable for payment in lieu of contributions and on wages paid by one or more employers who are liable for contributions, the amount of benefits payable by each employer that is liable for payments in lieu of contributions shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base period wages paid to the individual by such employer bear to the total base period wages paid to the individual by all of his base period employers.

(ii) If benefits paid to an individual are based on wages paid by two (2) or more employers that are liable for payments in lieu of contributions, the amount of benefits payable by each such employer shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base period wages paid to the individual by such employer bear to the total base period wages paid to the individual by all of his base period employers.

(d) In the discretion of the department, any nonprofit organization that elects to become liable for payments in lieu of contributions shall be required to execute and file with the department a surety bond approved by the department, or it may elect instead to deposit with the department money or securities. The amount of such bond or deposit shall be determined in accordance with the provisions of this paragraph.

(i) The amount of the bond or deposit required by paragraph (d) shall be equal to two and seven-tenths percent (2.7%) thereafter to December 31, 2010, and one and thirty-five one-hundredths percent (1.35%) thereafter, of the organization's taxable wages paid for employment as defined in Section 71-5-11, subsection J(4), for the four (4) calendar quarters immediately preceding the effective date of the election, the renewal date in the case of a bond, or the biennial anniversary of the effective date of election in the case of a deposit of money or securities, whichever date shall be most recent and applicable. If the nonprofit organization did not pay wages in each of such four (4) calendar quarters, the amount of the bond or deposit shall be as determined by the department.

(ii) Any bond deposited under paragraph (d) shall be in force for a period of not less than two (2) tax years and shall be renewed with the approval of the department at such times as the department may prescribe, but not less frequently than at intervals of two (2) years as long as the organization continues to be liable for payments in lieu of contributions. The department shall require adjustments to be made in a previously filed bond as it deems appropriate. If the bond is to be increased, the adjusted bond shall be filed by the organization within thirty (30) days of the date notice of the required adjustment was delivered to it. Failure by any organization covered by such bond to pay the full amount of payments in lieu of contributions when due, together with any applicable interest and penalties provided in paragraph (b)(v) of this section, shall render the surety liable on the bond to the extent of the bond, as though the surety was such organization.

(iii) Any deposit of money or securities in accordance with paragraph (d) shall be retained by the department in an escrow account until liability under the election is terminated, at which time it shall be returned to the organization, less any deductions as hereinafter provided. The department may deduct from the money deposited under paragraph (d) by a nonprofit organization, or sell the securities it has so deposited, to the extent necessary to satisfy any due and unpaid payments in lieu of contributions and any applicable interest and penalties provided for in paragraph (b)(v) of this section. The department shall require the organization, within thirty (30) days following any deduction from a money deposit or sale of deposited securities under the provisions hereof, to deposit sufficient additional money or securities to make whole the organization's deposit at the prior level. Any cash remaining from the sale of such securities shall be a part of the organization's escrow account. The department may, at any time, review the adequacy of the deposit made by any organization. If, as a result of such review, it determines that an adjustment is necessary, it shall require the organization to make additional deposit within thirty (30) days of notice of its determination or shall return to it such portion of the deposit as it no longer considers necessary, whichever action is appropriate. Disposition of income from securities held in escrow shall be governed by the applicable provisions of the state law.

(iv) If any nonprofit organization fails to file a bond or make a deposit, or to file a bond in an increased amount, or to increase or make whole the amount of a previously made deposit as provided under this subparagraph, the department may terminate such organization's election to make payments in lieu of contributions, and such termination shall continue for not less than the four (4) consecutive calendar-quarter periods beginning with the quarter in which such termination becomes effective; however, the department may extend for good cause the applicable filing, deposit or adjustment period by not more than thirty (30) days.

(v) Group account shall be established according to regulations prescribed by the department.

(e) Any employer which elects to make payments in lieu of contributions into the Unemployment Compensation Fund as provided in this paragraph shall not be liable to make such payments with respect to the benefits paid to any individual whose base period wages include wages for previously uncovered services as defined in Section 71-5-511(e) to the extent that the Unemployment Compensation Fund is reimbursed for such benefits pursuant to Section 121 of Public Law 94-566.

SOURCES: Codes, 1942, § 7392.3; Laws, 1971, ch. 519, § 16; Laws, 1977, ch. 497, § 4; Laws, 1978, ch. 339, § 1; Laws, 1982, ch. 480, § 1; Laws, 1983, ch. 361; Laws, 1998, ch. 331, § 5; Laws, 2002, ch. 562, § 2; Laws, 2004, ch. 572, § 34; Laws, 2007, ch. 606, § 9; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 34; Laws, 2010, ch. 504, § 4, eff from and after passage (approved April 8, 2010); reenacted without change, Laws, 2010, ch. 559, § 33; reenacted without change, Laws, 2011, ch. 471, § 34, eff from and after July 1, 2011.

Joint Legislative Committee Note — Section 33 of ch. 559, Laws of 2010, effective July 1, 2010 (approved May 12, 2010), amended this section. Section 4 of ch. 504, Laws of 2010, effective upon passage (approved April 8, 2010), also amended this section. As set out above, this section reflects the language of both amendments, pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 22, 2010, meeting of the Committee.

Editor's Note — Laws of 1977, ch. 497, § 10, provides:

"SECTION 10. In the event the provisions of P.L. 94-566, the Unemployment Compensation Amendments of 1976, which mandate unemployment insurance coverage for state and local government employees, are declared unconstitutional, the amendments, which mandate unemployment insurance coverage for state and local government employees, adopted to Sections 71-5-11, 71-5-351, 71-5-355, 71-5-357, 71-5-359, 71-5-361, 71-5-511, 71-5-513 and 71-5-541, Mississippi Code of 1972, at the 1977 Regular Session of the Legislature shall stand repealed."

Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, and as amended by Laws of 2011, ch. 471, § 59, provides:

"SECTION 60. This act shall stand repealed on July 1, 2014."

Amendment Notes — The first 2010 amendment by (ch. 504), inserted "through December 31, 2010, and shall pay twenty-five one-hundredths percent (.25%) thereafter" in (b)(iv); and substituted "thereafter to December 31, 2010, and one and thirty-five one-hundredths percent (1.35%) thereafter" in (d)(i).

The second 2010 amendment by (ch. 559), reenacted the section without change.

The 2011 amendment reenacted the section without change.

Cross References — Provisions relative to the obligations of state boards, state agencies, and political subdivisions under the Mississippi Unemployment Compensation Law, see § 71-5-359.

Eligibility conditions on receipt of benefits, see § 71-5-511.

Federal Aspects — Section 501(a) of the Internal Revenue Code is codified as 26 USCS § 501(a).

JUDICIAL DECISIONS

1. In general.

Where a worker was employed by two separate employers, a contributing employer within the meaning of § 71-5-351, and a reimbursing employer within the meaning of § 71-5-357, the reimbursing employer, a school district, was required to reimburse the state for a pro rata share of benefits paid under § 71-5-357(c)(i), even though it continued to employ the worker on a part-time basis. McLaurin v. Mississippi Emp. Sec. Comm'n, 435 So. 2d 1170 (Miss. 1983).

Political subdivisions of the State of Mississippi which reimbursed the state unemployment fund for benefits which it paid to unemployed workers for service with such subdivisions, were not liable for erroneously paid benefits to an unemployed worker by the Mississippi Employment Security Commission. Mississippi Emp. Sec. Comm'n v. City of Columbus Light & Water Dep't, 424 So. 2d 553 (Miss. 1982).

RESEARCH REFERENCES

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation § 23.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 284, 287.

§ 71-5-359. Regulations governing state boards, instrumentalities, and political subdivisions [Repealed effective July 1, 2014].

(1) The Department of Finance and Administration shall, in the manner provided in subsection (3) of this section, pay, upon notice issued by the department, to the department for the Unemployment Compensation Fund an amount equal to the regular benefits and one-half (½) of the extended benefits paid that are attributable to service in the employ of a state agency. The amount required to be reimbursed by a certain agency shall be billed to the Department of Finance and Administration and shall be paid from the Employment Compensation Revolving Fund pursuant to subsection (3) of this section not later than thirty (30) days after such bill was sent, unless there has been an application for review and redetermination in accordance with Section 71-5-357(b)(v).

(2) The Department of Finance and Administration shall, in the manner provided in subsection (3) of this section, pay, upon a notice issued by the department, to the department for the Unemployment Compensation Fund an amount equal to the regular benefits and the extended benefits paid that are

attributable to service in the employ of a state agency. The amount required to be reimbursed by a certain agency shall be billed to the Department of Finance and Administration and shall be paid from the Employment Compensation Revolving Fund pursuant to subsection (3) of this section not later than thirty (30) days after such bill was sent, unless there has been an application for review and redetermination in accordance with Section 71-5-357(b)(v).

(3) Each agency of state government shall deposit monthly for a period of twenty-four (24) months an amount equal to one-twelfth of one percent (1⁄12 of 1%) of the first Six Thousand Dollars ($6,000.00) paid to each employee thereof during the next preceding year into the Employment Compensation Revolving Fund that is created in the State Treasury. The Department of Finance and Administration shall determine the percentage to be applied to the amount of covered wages paid in order to maintain a balance in the revolving fund of not less than the amount determined by an actuary through an annual actuarial evaluation. The State Treasurer shall invest all funds in the Employment Compensation Revolving Fund and all interest earned shall be credited to the Employment Compensation Revolving Fund.

The reimbursement of benefits paid by the Mississippi Department of Employment Security shall be paid by the Department of Finance and Administration from the Employment Compensation Revolving Fund upon notice from the department; and the Department of Finance and Administration shall issue warrants or may contract for the performance of the duties prescribed by subsections (2) and (3) of this section, and other duties necessarily related thereto.

(4) Any political subdivision of this state shall pay to the department for the unemployment compensation fund an amount equal to the regular benefits and the extended benefits paid that are attributable to service in the employ of such political subdivision unless it elects to make contributions to the unemployment fund as provided in subsection (9) of this section. The amount required to be reimbursed shall be billed and shall be paid as provided in Section 71-5-357, with respect to similar payments for nonprofit organizations.

(5) Each political subdivision, unless it elects to make contributions to the unemployment compensation fund as provided in subsection (9) of this section, shall establish a revolving fund and deposit an amount equal to two percent (2%) of the first Six Thousand Dollars ($6,000.00) paid to each employee thereof during the next preceding year. However, the department shall by regulation establish a procedure to allow reimbursing political subdivisions to elect to maintain the balance in the revolving fund as required under this paragraph or to annually execute a surety bond to be approved by the department in an amount not less than two percent (2%) of the covered wages paid during the next preceding year.

(6) In the event any political subdivision becomes delinquent in payments due under this chapter, upon due notice, and upon certification of the delinquency by the department to the Department of Finance and Administration, the Department of Revenue, the Department of Environmental Quality and the Department of Insurance, or any of them, or any other agencies of

the State of Mississippi that may be indebted to such delinquent political subdivision, such agencies shall direct the issuance of warrants which in the aggregate shall be the amount of such delinquency payable to the department and drawn upon any funds in the State Treasury which may be available to such political subdivision in satisfaction of any such delinquency. This remedy shall be in addition to any other collection remedies in this chapter or otherwise provided by law.

(7) Payments made by any political subdivision under the provisions of this section shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

(8) Any governmental entity shall not be liable to make payments to the unemployment fund with respect to the benefits paid to any individual whose base period wages include wages for previously uncovered services as defined in Section 71-5-511, subsection (e), to the extent that the Unemployment Compensation Fund is reimbursed for such benefits pursuant to Section 121 of Public Law 94-566.

(9) Any political subdivision of this state may elect to make contributions to the unemployment fund instead of making reimbursement for benefits paid as provided in subsections (4) and (5) of this section. A political subdivision which makes this election shall so notify the department, not later than three (3) months after it is officially organized or is otherwise established, and shall be subject to the provisions of Section 71-5-351, with regard to the payment of contributions. A political subdivision which makes this election shall pay contributions equal to two percent (2%) of taxable wages through calendar year 2010, and one percent (1%) of taxable wages thereafter paid by it during each calendar quarter it is subject to this chapter. The department shall by regulation establish a procedure to allow political subdivisions the option periodically to elect either the reimbursement or the contribution method of financing unemployment compensation coverage.

SOURCES: Codes, 1942, § 7392.5; Laws, 1971, ch. 519, § 17; Laws, 1977, ch. 497, § 5; Laws, 1978, ch. 340, § 1; Laws, 1984, ch. 488, § 274; Laws, 1986, ch. 320; Laws, 1993, ch. 353, § 1; Laws, 1993, ch. 397, § 1; Laws, 1995, ch. 507, § 3; Laws, 2004, ch. 572, § 35; Laws, 2007, ch. 556, § 1; Laws, 2007, ch. 606, § 10; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 35; Laws, 2010, ch. 504, § 5; reenacted without change, Laws, 2010, ch. 559, § 34; reenacted and amended, Laws, 2011, ch. 471, § 35, eff from and after July 1, 2011.

Joint Legislative Committee Note — Section 1 of ch. 556, Laws of 2007, effective July 1, 2007 (approved April 20, 2007), amended this section. Section 10 of ch. 606, Laws of 2007, effective July 1, 2007 (approved April 25, 2007), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the June 26, 2007, meeting of the Committee.

Section 34 of ch. 559, Laws of 2010, effective July 1, 2010 (approved May 12, 2010), amended this section. Section 5 of ch. 504, Laws of 2010, effective upon passage (approved April 8, 2010), also amended this section. As set out above, this section reflects the language of both amendments, pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 22, 2010, meeting of the Committee.

Editor's Note — Laws of 1977, ch. 497, § 10, provides:

"SECTION 10. In the event the provisions of P.L. 94-566, the Unemployment Compensation Amendments of 1976, which mandate unemployment insurance coverage for state and local government employees, are declared unconstitutional, the amendments, which mandate unemployment insurance coverage for state and local government employees, adopted to Sections 71-5-11, 71-5-351, 71-5-355, 71-5-357, 71-5-359, 71-5-361, 71-5-511, 71-5-513 and 71-5-541, Mississippi Code of 1972, at the 1977 Regular Session of the Legislature shall stand repealed."

Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, and as amended by Laws of 2011, ch. 471, § 59, provides:

"SECTION 60. This act shall stand repealed on July 1, 2014."

Amendment Notes — The first 2010 amendment by (ch. 504), rewrote the section.

The second 2010 amendment by (ch. 559), reenacted the section without change.

The 2011 amendment reenacted and amended the section by substituting "Department of Revenue" for "State Tax Commission" in the first sentence of (6) and making a minor stylistic change in the first sentence of (5).

Cross References — Joint legislative budget committee and legislative budget office generally, see §§ 27-103-101 et seq.

Eligibility conditions on receipt of benefits, see § 71-5-511.

RESEARCH REFERENCES

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation § 28.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 284, 287.

§ 71-5-361. Period, election, and termination.

(1) Except as provided in subsection (3) of this section, any employing unit which is or becomes an employer subject to this chapter within any calendar year shall be deemed to be an employer during the whole of such calendar year.

(2) Except as otherwise provided in subsection (3) of this section:

(a) An employing unit (other than a state hospital, state institution of higher learning, state or state agency or other political subdivision or instrumentality) except as provided in subsections (b) and (c) of this subsection, shall cease to be an employer subject to this chapter only as of the first day of January of any calendar year, only if it files with the commission on or before the thirty-first day of May of such year a written application for termination of coverage, and the commission finds that during the preceding calendar year the employing unit did not pay wages of One Thousand Five Hundred Dollars ($1,500.00) or more in any calendar quarter and that there were no twenty (20) days, each day being in a different week within the preceding calendar year, within which such employing unit employed one or more individuals in employment subject to this chapter, or four (4) or more in the case of nonprofit organizations, except if the commission finds that throughout a calendar year an employer has had no employment, it shall cease to be an employer subject to this chapter.

(b) An agricultural employer as defined under Section 71-5-11, subsection I(4)(a) shall cease to be an agricultural employer subject to this chapter only as of the first day of January of any calendar year, only if it files with the commission on or before the thirty-first day of May of such year a written application for termination of coverage, and the commission finds that during the preceding calendar year the employing unit did not pay for agricultural employment wages as defined in Section 71-5-11, subsection J(6) of Twenty Thousand Dollars ($20,000.00) in any calendar quarter of the preceding calendar year and that there were no twenty (20) days, each day being in a different week, within such calendar year, within which such employing unit employed ten (10) or more individuals in employment subject to this chapter, except if the commission finds that throughout a calendar year an employer has had no employment, it shall cease to be an employer subject to this chapter.

(c) A domestic employer, as defined in Section 71-5-11, subsection I(4)(b), shall cease to be an employer subject to this chapter only as of the first day of January of any calendar year, only if it files with the commission on or before the thirty-first day of May of such year a written application for termination of coverage, and the commission finds that during the preceding calendar year the employing unit did not pay wages for domestic employment of One Thousand Dollars ($1,000.00) or more in any calendar quarter of the preceding calendar year, except if the commission finds that throughout a calendar year an employer has had no employment, it shall cease to be an employer subject to this chapter.

(d) For the purpose of this subsection, the two (2) or more employing units mentioned in Section 71-5-11, subsection I(5) or (6), shall be treated as a single employing unit. The commission may, of its own motion, cancel and terminate the effect of registrations for purposes of its accounting records in cases where it has found that employing units, duly registered as covered employers under the chapter, have died, ceased business or removed from the state without applying for termination of coverage, provided that the rights of claimants for benefits shall not be affected thereby.

(3)(a) An employing unit, not otherwise subject to this chapter, which files with the commission its written election to become an employer subject thereto for not less than two (2) calendar years shall, with the written approval of such election by the commission or the executive director, become an employer subject hereto to the same extent as all other employers as of the date stated in such approval, and shall cease to be subject hereto as of

January 1 of any calendar year subsequent to such two (2) calendar years only if it files with the commission, on or before the thirty-first day of May of such year, a written application for termination of coverage thereunder.

(b) Any employing unit, for which services that do not constitute employment as defined in this chapter are performed, may file with the commission a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment by an employer for all purposes of this chapter for not less than two (2) calendar years. Upon written approval of such election by the commission, such services shall be deemed to constitute employment subject to this chapter from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1 of any calendar year subsequent to such two (2) calendar years only if, prior to the thirty-first day of May of such year, such employing unit has filed with the commission a written notice to that effect.

(4)(a) Prior to January 1, 1978, any political subdivision of this state may elect to cover under this chapter, for a period of not less than two (2) calendar years, services performed by employees in all of the hospitals and institutions of higher learning, as defined in Section 71-5-11, subsection N or O, operated by such political subdivision. Election is to be made by filing with the commission a notice of such election at least thirty (30) days prior to the effective date of such election. The election may exclude any services described in Section 71-5-11, subsection J(5). Any political subdivision electing coverage under this subsection shall make payments in lieu of contributions with respect to benefits attributable to such employment as provided with respect to nonprofit organizations in subsections (b) and (c) of section 71-5-357.

(b) Prior to January 1, 1978, the provisions in Section 71-5-511, subsection (g) with respect to benefit rights based on service for state and nonprofit institutions of higher learning shall be applicable also to service covered by an election under this section.

(c) Prior to January 1, 1978, the amounts required to be paid in lieu of contributions by any political subdivision under this section shall be billed and payment made as provided in subsections (b) and (c) of Section 71-5-357.

(d) Prior to January 1, 1978, an election under this section, after having been in effect for not less than two (2) calendar years, may be terminated by filing with the commission written notice not later than thirty (30) days preceding the last day of the calendar year in which the termination is to be effective. Such termination becomes effective as of the first day of the next ensuing calendar year with respect to services performed on and after that date.

SOURCES: Codes, 1942, § 7393; Laws, 1940, ch. 295; Laws, 1955, Ex. ch. 93, § 1; Laws, 1971, ch. 519, § 9; Laws, 1977, ch. 497, § 6, eff from and after passage (approved April 15, 1977).

Editor's Note — Laws of 1977, ch. 497, § 10, provides:

"SECTION 10. In the event the provisions of P.L. 94-566, the Unemployment Compensation Amendments of 1976, which mandate unemployment insurance coverage for state and local government employees, are declared unconstitutional, the amendments, which mandate unemployment insurance coverage for state and local government employees, adopted to Sections 71-5-11, 71-5-351, 71-5-355, 71-5-357, 71-5-359, 71-5-361, 71-5-511, 71-5-513 and 71-5-541, Mississippi Code of 1972, at the 1977 Regular Session of the Legislature shall stand repealed."

Cross References — Definitions of employing unit and employer, see § 71-5-11.

Conditions of eligibility for benefits, see § 71-5-511.

RESEARCH REFERENCES

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation §§ 20, 21, 26.

24 Am. Jur. Pl & Pr Forms (Rev), Unemployment Compensation, Forms 18, 20, 23.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 289, 309-311 et seq.

§ 71-5-363. Interest on past due contributions.

Contributions unpaid on the date on which they are due and payable shall bear interest at the rate of one percent (1%) per month from and after such date until payment plus accrued interest is received by the commission, provided that the commission may prescribe fair and reasonable general rules pursuant to which such interest shall not accrue during the first calendar year that any employer is subject to this chapter. Interest collected pursuant to this section shall be paid into the special employment security administration fund established by Section 71-5-114.

SOURCES: Codes, 1942, § 7423; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9a; Laws, 1958, ch. 533, § 7a; Laws, 1968, ch. 561, § 3a; Laws, 1982, ch. 383, § 2, eff from and after July 1, 1982.

Cross References — Provision that benefits improperly received as a result of nondisclosure or misrepresentation of a material fact may either be deducted from future benefits or subject to collection pursuant to Sections 71-5-363 to 71-5-383, see § 71-5-19.

Enforcement procedures for collection of delinquent payments due by nonprofit organizations, see § 71-5-357.

Composition and control of unemployment compensation fund, see § 71-5-451.

Collection of overpayments due to disqualification for benefits, see § 71-5-513.

RESEARCH REFERENCES

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation § 9.

CJS. 81 C.J.S., Social Security and Public Welfare § 352.

§ 71-5-365. Failure to make reports and pay contributions.

If any employer fails to make and file any report as and when required by the terms and provisions of this chapter or by any rule or regulation of the commission for the purpose of determining the amount of contributions due by him under this chapter, or if any report which has been filed is deemed by the executive director to be incorrect or insufficient, and such employer, after having been given notice by the executive director to file such report, or a corrected or sufficient report, as the case may be, shall fail to file such report within fifteen (15) days after the date of such notice, the executive director may (a) determine the amount of contributions due from such employer on the basis of such information as may be readily available to him, which said determination shall be prima facie correct, (b) assess such employer with the amount of contribution so determined, to which amount may be added and assessed by the executive director in his discretion, as damages, an amount equal to ten percent (10%) of said amount, and (c) immediately give notice to such employer of such determination, assessment, and damages, if any, added and assessed, demanding payment of same together with interest, as herein provided, on the amount of contributions from the date when same were due and payable. Such determination and assessment by the executive director shall be final at the expiration of fifteen (15) days from the date of such notice thereof demanding payment, unless:

(a) Such employer shall have filed with the department a written protest and petition for a hearing, specifying his objections thereto. Upon receipt of such petition within the fifteen (15) days allowed, the department shall fix the time and place for a hearing and shall notify the petitioner thereof. At any hearing held before the department as herein provided, evidence may be offered to support such determination and assessment or to prove that it is incorrect, and the commission shall have all the power provided in Sections 71-5-137 and 71-5-139. Immediately after such hearing a final decision in the matter shall be made by the commission, and any contributions or deficiencies in contributions found and determined by the commission to be due shall be assessed and paid, together with interest, within fifteen (15) days after notice of such final decision and assessment, and demand for payment thereof by the department shall have been sent to such employer.

(b) The department, in its discretion, determines on the basis of information submitted by the employer that such assessment should be amended and adjusted to reflect the correct amount of taxes.

Sixty (60) days after the due date of the contributions, together with interest and damages, or upon issuance of a warrant, whichever occurs first, the department, in its discretion, may assess an additional sum not exceeding one hundred percent (100%) of the amount of the unpaid contributions due as damages for failure to pay.

SOURCES: Codes, 1942, § 7424; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9b; Laws, 1958, ch. 533, § 7b; Laws, 1968, ch. 561, § 3b; Laws, 1991, ch. 511, § 2; Laws, 1995, ch. 507, § 4; Laws, 2007, ch. 606, § 11, eff from and after July 1, 2007.

Editor's Note — Section 71-5-101 provides that the term "Employment Security Commission" shall mean the Mississippi Department of Employment Security.

Cross References — Provision that benefits improperly received as a result of nondisclosure or misrepresentation of a material fact may either be deducted from future benefits or subject to collection pursuant to Sections 71-5-363 to 71-5-383, see § 71-5-19.

Deposit or transfer of interest, penalties and damages into special employment security administration fund, see § 71-5-114.

Enforcement procedures for collection of delinquent payments due by nonprofit organizations, see § 71-5-357.

Collection of overpayments due to disqualification for benefits, see § 71-5-513.

RESEARCH REFERENCES

ALR. Construction, application, and effect, with respect to withholding, social security, and unemployment compensation taxes, of statutes imposing penalties for tax evasion or default. 22 A.L.R.3d 8.

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation § 9.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 373 et seq.

§ 71-5-367. Collection by warrant.

If an employer shall file a report in proper form and in proper amount, but shall fail to pay the amount of contributions shown to be due thereby at the time of such filing, or if an employer shall fail to pay any assessment as provided and made under Section 71-5-365 within fifteen (15) days after such assessment has become final as herein provided, the commission may issue a warrant under its official seal, directed to the sheriff of any county of the state, commanding him to levy upon and sell the real and personal property of such employer as has defaulted in the payment of such contributions or assessments, which may be found within his county, for the payment of the amount thereof, together with interest, damages, if any, assessed for failure to make and file a report or a corrected or sufficient report, and an additional sum not exceeding one hundred percent (100%) of the amount of the unpaid contributions due, in the discretion of the commission, as damages for failure to pay, if not already assessed under Section 71-5-365 and the costs of executing the warrant and to return such warrant to the commission, and to pay to it the money collected by virtue thereof on the date specified therein. The commission shall cause to be delivered to the clerk of the circuit court a copy of such warrant issued to the sheriff. Such clerk shall enter in the judgment roll, in the column for judgment debtors, the name of the employer mentioned in the warrant and, in appropriate columns, the amount of contributions, interest and damages for which the warrant is issued, a notation that the lien covers all previous, current and future periods for the life of the lien, and the date when such copy is filed. Thereupon the amount of such warrant so filed and entered shall become a lien upon the title to and interest in all real and personal property, including choses in action against negotiable instruments not past due, of the employer against whom the warrant is issued in the same manner as a judgment duly enrolled in the office of such clerk. Any such liens shall cover all contributions, interest and damages owed to the commission from previous, current and future periods until the expiration of such lien or until the amount of the lien is fully satisfied. Such judgment shall not be a lien upon the property of the employer for a period of more than seven (7) years from the date of filing of the notice of the tax lien for failure to pay contributions, damages and interest unless action be brought thereon before the expiration of such time or unless the commission refiles such notice of tax lien before the expiration of such time. The judgment shall be a lien upon the property of the employer for a period of seven (7) years from the date of refiling such notice of tax lien unless action be brought thereon before the expiration of such time or unless the commission refiles such notice of tax lien before the expiration of such time. There shall be no limit upon the number of times the commission may refile notices of tax liens. The sheriff shall proceed upon the warrant in the same manner and with like effect as that provided by law in respect to executions issued against property upon judgments or in attachment proceedings of a court of record, and the remedies by garnishment shall apply; and for his services in executing the warrant the sheriff shall be entitled to the same fees, which he may collect in the same manner.

The commission may elect to issue the warrant directly to the circuit clerk of any county of this state for enrollment upon the judgment rolls of the county. In such case, the clerk shall enter in the judgment roll, in the column for judgment debtors, the name of the employer mentioned in the warrant and, in appropriate columns, the amount of contributions, interest and damages for which the warrant is issued, a notation that the lien covers all previous, current and future periods for the life of the lien, and the date when such warrant is filed. The lien shall have the same effect and remedies as that provided by law in respect to executions issued against property upon judgments or in attachment proceedings of a court of record, and the remedies by garnishment shall apply.

On the suggestion of the commission, in writing, that any person is indebted to an employer named in any warrant which has been entered on the judgment roll in the office of the circuit clerk of any county, or has property of such employer in his hands, or knows of some other person who is so indebted, or who has effects or property of such employer in his hands, it shall be the duty of the clerk of the circuit court of such county to issue a writ of garnishment directed to the sheriff or proper officer, commanding him to summon such person as garnishee to appear at a term of the circuit court of the county, or a term of the county court, as in cases provided by law for garnishment upon the judgments of such court, to answer accordingly. The circuit court or county court, as the case may be, shall assume full jurisdiction over the subject matter and the parties, and all the provisions of law with respect to garnishment proceedings instituted in the circuit court under Sections 11-35-1 through 11-35-61 of the Mississippi Code of 1972, shall be applicable as far as possible thereto.

SOURCES: Codes, 1942, § 7425; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9c; Laws, 1958, ch. 533, § 7c; Laws, 1968, ch. 561, § 3c; Laws, 1995, ch. 507, § 5; Laws, 1996, ch. 464, § 2; Laws, 2000, ch. 508, § 1, eff from and after July 1, 2000.

Editor's Note — Section 71-5-101 provides that the term "Employment Security Commission" shall mean the Mississippi Department of Employment Security.

Cross References — Garnishment proceedings, see §§ 11-35-1 et seq.

Executions on judgments, see §§ 13-3-111 et seq.

Provision that benefits improperly received as a result of nondisclosure or misrepresentation of a material fact may either be deducted from future benefits or subject to collection pursuant to Sections 71-5-363 to 71-5-383, see § 71-5-19.

Deposit or transfer of interest, penalties and damages into special employment security administration fund, see § 71-5-114.

Enforcement procedures for collection of delinquent payments due by nonprofit organizations, see § 71-5-357.

Collection of overpayments due to disqualification for benefits, see § 71-5-513.

RESEARCH REFERENCES

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation § 9.

24 Am. Jur. Pl & Pr Forms (Rev), Unemployment Compensation, Forms 18, 20, 23, 25.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 352 et seq.

§ 71-5-369. Jeopardy assessment and warrant.

If the commission has just cause to believe and does believe that the collection of contributions from an employer will be jeopardized by delay, it may assess such contributions immediately, together with interest and other amounts provided by this chapter, and may immediately issue a jeopardy warrant under its official seal, directed to the sheriff of any county of said state. The sheriff shall, immediately upon receipt of such jeopardy warrant, file with the clerk of the circuit court of his county a copy thereof, and thereafter both the clerk and the sheriff shall proceed in accordance with the provisions of Section 71-5-367.

SOURCES: Codes, 1942, § 7426; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9d; Laws, 1958, ch. 533, § 7d; Laws, 1968, ch. 561, § 3d, eff from and after July 1, 1968.

Editor's Note — Section 71-5-101 provides that the term "Employment Security Commission" shall mean the Mississippi Department of Employment Security.

Cross References — Provision that benefits improperly received as a result of nondisclosure or misrepresentation of a material fact may either be deducted from future benefits or subject to collection pursuant to Sections 71-5-363 to 71-5-383, see § 71-5-19.

Deposit or transfer of interest, penalties and damages into special employment security administration fund, see § 71-5-114.

Enforcement procedures for collection of delinquent payments due by nonprofit organizations, see § 71-5-357.

Collection of overpayments due to disqualification for benefits, see § 71-5-513.

RESEARCH REFERENCES

CJS. 81 C.J.S., Social Security and Public Welfare §§ 374, 375.

§ 71-5-371. Liability of sheriff for failure to execute warrant.

If any sheriff shall fail to return any warrant directed to him as herein provided on the return day thereof, the commission shall be entitled to recover judgment against the sheriff and the sureties on his official bond for the amount of the warrant and all costs, with lawful interest thereon until paid, together with ten per centum (10%) of the full amount thereof as damages, to be recovered by suit against the sheriff and his sureties by the commission. If any sheriff shall falsely make a nulla bona return on any warrant directed to him as herein provided, the commission shall be entitled to recover judgment against the sheriff and the sureties on his official bond for such amount as he could reasonably have made under such warrant and all costs, together with lawful interest thereon until paid, together with ten per centum (10%) thereon as damages, to be recovered by a suit against the sheriff and his sureties by the commission.

SOURCES: Codes, 1942, § 7427; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9e; Laws, 1958, ch. 533, § 7e; Laws, 1968, ch. 561, § 3e, eff from and after July 1, 1968.

Editor's Note — Section 71-5-101 provides that the term "Employment Security Commission" shall mean the Mississippi Department of Employment Security.

Cross References — Provision that benefits improperly received as a result of nondisclosure or misrepresentation of a material fact may either be deducted from future benefits or subject to collection pursuant to Sections 71-5-363 to 71-5-383, see § 71-5-19.

Deposit or transfer of interest, penalties and damages into special employment security administration fund, see § 71-5-114.

Enforcement procedures for collection of delinquent payments due by nonprofit organizations, see § 71-5-357.

Collection of overpayments due to disqualification for benefits, see § 71-5-513.

§ 71-5-373. Defaulting employer.

An employer liable for contributions under the provisions of this chapter who fails to make and file his returns and reports as required, or who fails to pay any contributions when due under the provisions of this chapter, shall forfeit his right to do business in this state until he complies with all the provisions of this chapter and until he enters into a bond with sureties, to be approved by the commission, in an amount not to exceed all contributions estimated to become due by said employer under the provisions of this chapter for any three-month period, conditioned to comply with the provisions of this chapter, and to pay all contributions legally due or to become due by him. The commission may proceed by injunction to prevent the continuance of said business, and any temporary injunction enjoining the continuance of such business shall be granted without notice by any judge or chancellor now authorized by law to grant injunctions.

SOURCES: Codes, 1942, § 7428; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9f; Laws, 1958, ch. 533, § 7f; Laws, 1968, ch. 561, § 3f, eff from and after July 1, 1968.

Editor's Note — Section 71-5-101 provides that the term "Employment Security Commission" shall mean the Mississippi Department of Employment Security.

Cross References — Granting injunctions generally, see §§ 11-13-1 et seq.

Provision that benefits improperly received as a result of nondisclosure or misrepresentation of a material fact may either be deducted from future benefits or subject to collection pursuant to Sections 71-5-363 to 71-5-383, see § 71-5-19.

Deposit or transfer of interest, penalties and damages into special employment security administration fund, see § 71-5-114.

Enforcement procedures for collection of delinquent payments due by nonprofit organizations, see § 71-5-357.

Collection of overpayments due to disqualification for benefits, see § 71-5-513.

RESEARCH REFERENCES

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation, §§ 15, 18 et seq.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 374, 375.

§ 71-5-375. Contributions a lien.

The contributions required by this chapter shall be a lien upon the property of any employer subject to its provisions who shall sell out his business or stock of goods, or who shall quit business, or whose property used or acquired in the business shall be sold under voluntary conveyance or under foreclosure, execution, attachment, distraint, or other judicial proceedings. Such employer shall, within ten (10) days before the happening of any of the above contingencies, be required to file such reports as the commission shall prescribe and to pay the contributions required by this chapter with respect to wages payable for employment up to the date of the happening of such contingency. The purchaser or successor in business shall withhold sufficient of the purchase money to cover the amount of contributions due and unpaid, until such time as such employer shall produce a receipt from the commission showing that the contributions have been paid or a certificate that no contributions are due. If such purchaser or successor shall fail to withhold purchase money as above provided, and the contributions shall not be paid within the ten (10) days specified above, such purchaser or successor shall be personally liable for the payment of the contributions accrued and unpaid on account of the operation of the business by the former owner.

SOURCES: Codes, 1942, § 7429; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9g; Laws, 1958, ch. 533, § 7g; Laws, 1968, ch. 561, § 3g; Laws, 1983, ch. 362, eff from and after passage (approved March 16, 1983).

Editor's Note — Section 71-5-101 provides that the term "Employment Security Commission" shall mean the Mississippi Department of Employment Security.

Cross References — Provision that benefits improperly received as a result of nondisclosure or misrepresentation of a material fact may either be deducted from future benefits or subject to collection pursuant to Sections 71-5-363 to 71-5-383, see § 71-5-19.

Deposit or transfer of interest, penalties and damages into special employment security administration fund, see § 71-5-114.

Enforcement procedures for collection of delinquent payments due by nonprofit organizations, see § 71-5-357.

Collection of overpayments due to disqualification for benefits, see § 71-5-513.

RESEARCH REFERENCES

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation § 17.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 370-372.

§ 71-5-377. Priorities under legal dissolutions or distributions.

In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceedings, contributions then or thereafter due shall be paid in full prior to all other claims except taxes, but on a parity with claims for wages of not more than Two Hundred and Fifty Dollars ($250.00) to each claimant, earned within six (6) months of the commencement of the proceedings. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposals, or composition under the Federal Bankruptcy Act of 1898, as amended, contributions then or thereafter due shall be entitled to such priority as is provided therein for taxes due and owing this state.

SOURCES: Codes, 1942, § 7430; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9h; Laws, 1958, ch. 533, § 7h; Laws, 1968, ch. 561, § 3h, eff from and after July 1, 1968.

Editor's Note — The Federal Bankruptcy Act of 1898 (Pub. L. No. 55-541, 30 Stat. 544 (1898), codified at 11 USCS §§ 1 et seq.), referred to in this section, was repealed by the Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 (1978). For present provisions relating to priorities, see 11 USCS § 507.

Cross References — Provision that benefits improperly received as a result of nondisclosure or misrepresentation of a material fact may either be deducted from future benefits or subject to collection pursuant to Sections 71-5-363 to 71-5-383, see § 71-5-19.

Deposit or transfer of interest, penalties and damages into special employment security administration fund, see § 71-5-114.

Enforcement procedures for collection of delinquent payments due by nonprofit organizations, see § 71-5-357.

Collection of overpayments due to disqualification for benefits, see § 71-5-513.

RESEARCH REFERENCES

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation § 17.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 370-372.

§ 71-5-379. Collection by suit.

If, after due notice, an employer defaults in any payment of contributions or interest thereon, the amount due may be collected by civil action in the name of the commission, and this remedy shall be in addition to such other remedies as may be herein provided or otherwise provided by law. An employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date, and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review of claims for benefits under this chapter.

SOURCES: Codes, 1942, § 7431; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9i; Laws, 1956, ch. 533, § 7i; Laws, 1968, ch. 561, § 3k, eff from and after July 1, 1968.

Editor's Note — Section 71-5-101 provides that the term "Employment Security Commission" shall mean the Mississippi Department of Employment Security.

Cross References — Provision that benefits improperly received as a result of nondisclosure or misrepresentation of a material fact may either be deducted from future benefits or subject to collection pursuant to Sections 71-5-363 to 71-5-383, see § 71-5-19.

Deposit or transfer of interest, penalties and damages into special employment security administration fund, see § 71-5-114.

Enforcement procedures for collection of delinquent payments due by nonprofit organizations, see § 71-5-357.

Collection of overpayments due to disqualification for benefits, see § 71-5-513.

RESEARCH REFERENCES

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation §§ 9, 10, 17, 88.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 373 et seq.

§ 71-5-381. No injunction allowed to restrain collection.

No injunction shall be awarded by any court or judge to restrain the collection of contributions required by this chapter or to restrain the enforcement of this chapter. The provisions of section 11-13-11, shall not apply to contributions required by this chapter.

SOURCES: Codes, 1942, § 7432; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9j; Laws, 1958, ch. 533, § 7j; Laws, 1968, ch. 561, § 3j, eff from and after July 1, 1968.

Cross References — Restraint of collection of certain taxes, see § 11-13-11.

Provision that benefits improperly received as a result of nondisclosure or misrepresentation of a material fact may either be deducted from future benefits or subject to collection pursuant to Sections 71-5-363 to 71-5-383, see § 71-5-19.

Enforcement procedures for collection of delinquent payments due by nonprofit organizations, see § 71-5-357.

Collection of overpayments due to disqualification for benefits, see § 71-5-513.

§ 71-5-383. Refunds.

The commission is authorized and empowered to refund, without interest, such contributions, interest, and penalties as it may determine were paid erroneously by an employer, or may make or authorize an adjustment thereof in connection with subsequent contribution payments, provided the employer shall make written application for such refund or adjustment within three (3) years to the last day of the calendar year in which the services of individuals in employment, with respect to which such contributions were erroneously paid, were performed. For like cause and within the same period, adjustment or refund may be made on the commission's own initiative.

SOURCES: Codes, 1942, § 7433; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9k; Laws, 1958, ch. 533, § 7k; Laws, 1968, ch. 561, § 3k, eff from and after July 1, 1968.

Editor's Note — Section 71-5-101 provides that the term "Employment Security Commission" shall mean the Mississippi Department of Employment Security.

Cross References — Refunds to instrumentalities of the United States of payments into unemployment funds, under certain conditions, see § 71-5-11.

Provision that benefits improperly received as a result of nondisclosure or misrepresentation of a material fact may either be deducted from future benefits or subject to collection pursuant to Sections 71-5-363 to 71-5-383, see § 71-5-19.

Enforcement procedures for collection of delinquent payments due by nonprofit organizations, see § 71-5-357.

Payment of refunds pursuant to this section from clearing account in unemployment compensation fund, see § 71-5-453.

RESEARCH REFERENCES

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation § 15.

24 Am. Jur. Pl & Pr Forms (Rev), Unemployment Compensation, Forms 23, 25, 52, 53.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 377, 378.

§ 71-5-385. Requesting permission to file reports in special format; regulations; penalty.

Any employer may request permission to file unemployment compensation wage and contribution reports in a special format. If the request is approved by the commission, the employer must file the wage and contribution reports in accordance with regulations established by the commission. Failure to follow established regulations may result in a penalty of up to Five Hundred Dollars ($500.00) each calendar quarter for each employer connected with the report.

SOURCES: Laws, 1998, ch. 491, § 3, eff from and after July 2, 1998.

Editor's Note — Section 71-5-101 provides that the term "Employment Security Commission" shall mean the Mississippi Department of Employment Security.

§ 71-5-387. Contributions to the unemployment compensation fund by certain Indian tribes under Federal Unemployment Tax Act.

(1) Indian tribe(s) as defined in Section 3306(u) of the Federal Unemployment Tax Act (FUTA), which includes any subdivision, subsidiary or business enterprise wholly owned by such Indian tribe(s), subject to this chapter shall pay contributions under the same terms and conditions as all other subject employers, unless such Indian tribe elects to pay into the State Unemployment Fund amounts equal to the amount of benefits attributable to service in the employ of the Indian tribe.

(2) Tribal unit(s) means any subdivision, subsidiary or business enterprise wholly owned by any Indian tribe as defined in Section 3306(u) of the Federal Unemployment Tax Act (FUTA) or any combination of any such subdivisions, subsidiaries or business enterprises wholly owned by such Indian tribe as defined in Section 3306(u) of the Federal Unemployment Tax Act (FUTA).

(3) Indian tribes electing to make payments in lieu of contributions must make such election in the same manner and under the same conditions as provided in Section 71-5-357 pertaining to nonprofit organizations subject to this chapter, except the tribe may determine if reimbursement for benefits paid will be elected by the tribe as a whole, by individual tribal units or by combinations of individual tribal units. Any tribal unit not making such election, shall pay contributions as described in Sections 71-5-351 through 71-5-355.

(4) Payments in lieu of contributions shall be made in accordance with the provisions of Section 71-5-357.

(5) Failure of the Indian tribe or tribal unit to post any bond as required by this chapter or to make payments in lieu of contributions if so elected by the tribe or tribal unit, as provided in subsection (3) of this section, including assessments of interest and penalty, within ninety (90) days of mailing or transmittal of the first delinquency notice to the last known address, shall cause the Indian tribe to lose the option to make payments in lieu of contributions, as described in Section 71-5-357, for the following tax year, unless payment in full is received before January 1 of the next tax year.

(6) Any Indian tribe that loses the option to make payments in lieu of contributions, as provided in subsection (5) of this section, may have such options reinstated if, after a period of one (1) year, all contributions have been made timely and no contributions, payments in lieu of contributions for benefits paid, penalties or interest remain unpaid.

(7) Failure of the Indian tribe or any tribal unit thereof to make required payments, reimbursements or contributions whichever may apply, including assessments of interest and penalty, after all collection activities deemed necessary by the commission have been exhausted, may cause services performed for such tribe to not be treated as "employment" for purposes of Section 71-5-11.

(8) If any Indian tribe fails to post any bond as required by this chapter or make payments required under this chapter, including contributions, reimbursements or assessments of interest and penalty, within ninety (90) days of the mailing or transmittal of a final notice, the commission shall immediately notify the United States Internal Revenue Service and the United States Department of Labor.

(9) The commission may determine that any Indian tribe that loses coverage under subsection (7) of this section, may again have services performed for such tribe included as "employment" for purposes of Section 71-5-11 if all contributions, payments in lieu of contributions, penalties and interest have been paid.

(10) Notices of payment and reporting delinquency to any Indian tribe or tribal unit shall include information that failure to make full payment within the prescribed time frame:

(a) Shall cause the Indian tribe to be liable for taxes under the Federal Unemployment Tax Act (FUTA);

(b) Shall cause the Indian tribe to lose the option to make payments in lieu of contributions;

(c) May cause the Indian tribe to be excepted from the definition of "employer," as provided in Section 71-5-11, and services in the employ of the Indian tribe, as provided in Section 71-5-11, to be excepted from "employment."

(11) Benefits based on service performed in employment with an Indian tribe as defined in Section 3306(u) of the Federal Unemployment Tax Act (FUTA), which includes any subdivision, subsidiary or business enterprise wholly owned by such Indian tribe, shall be payable in the same amount, on the same terms and subject to the same conditions, as benefits payable on the basis of other service subject to this chapter.

(12) Extended benefits paid that are attributable to service in the employ of an Indian tribe, and not reimbursed by the federal government, shall be financed in their entirety by such Indian tribe.

(13) Any non-FUTA exclusions, that are by reference included in this section, shall not apply to Indian tribes if federal law requires coverage of such services.

SOURCES: Laws, 2002, ch. 562, § 3, eff from and after July 1, 2002.

Editor's Note — Section 71-5-101 provides that the term "Employment Security Commission" shall mean the Mississippi Department of Employment Security.

§ 71-5-389. Setoff against tax refunds for debts owed to Mississippi Department of Employment Security; submission of debts to Department of Revenue; notice to debtor; transfer of funds to Department of Revenue; hearings; appeals; confidentiality.

(1) For the purposes of this section, the following terms shall have the respective meanings ascribed by this section:

(a) "Claimant agency" means the Mississippi Department of Employment Security.

(b) "Debtor" means any individual owing money or having a delinquent account with any claimant agency, which obligation has not been adjudicated satisfied by court order, set aside by court order, or discharged in bankruptcy.

(c) "Debt" means any sum due and owing any claimant agency, including costs, court costs, fines, penalties and interest which have accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for that sum which is legally collectible and for which a collection effort has been or is being made.

(d) "Department" or "Department of Revenue" means the Department of Revenue of the State of Mississippi.

(e) "Refund" means the Mississippi income tax refund which the department determines to be due any individual taxpayer.

(2) The collection remedy authorized by this section is in addition to and is not substitution for any other remedy available by law.

(3)(a) A claimant agency may submit debts in excess of Twenty-five Dollars ($25.00) owed to it to the department for collection through setoff, under the procedure established by this section, except in cases where the validity of the debt is legitimately in dispute, an alternate means of collection is pending and believed to be adequate, or such collection would result in a loss of federal funds or federal assistance.

(b) Upon the request of a claimant agency, the department shall set off any refund, as defined herein, against the sum certified by the claimant agency as provided in this section.

(4)(a) Within the time frame specified by the department, a claimant agency seeking to collect a debt through setoff shall supply the information necessary to identify each debtor whose refund is sought to be set off and certify the amount of debt or debts owed by each such debtor.

(b) If a debtor identified by a claimant agency is determined by the department to be entitled to a refund of at least Twenty-five Dollars ($25.00), the department shall transfer an amount equal to the refund owed, not to exceed the amount of the claimed debt certified, to the claimant agency. The Department of Revenue shall send the excess amount to the debtor within a reasonable time after such excess is determined. At the time of the transfer of funds to a claimant agency pursuant to this paragraph (b), the Department of Revenue shall notify the taxpayer or taxpayers whose refund is sought to be set off that the transfer has been made. Such notice shall clearly set forth the name of the debtor, the manner in which the debt arose, the amount of the claimed debt, the transfer of funds to the claimant agency pursuant to this paragraph (b) and the intention to set off the refund against the debt, the amount of the refund in excess of the claimed debt, the taxpayer's opportunity to give written notice to contest the setoff within thirty (30) days of the date of mailing of the notice, the name and mailing address of the claimant agency to which the application for such a hearing must be sent, and the fact that the failure to apply for such a hearing, in writing, within the thirty-day period will be deemed a waiver of the opportunity to contest the setoff. In the case of a joint return or a joint refund, the notice shall also state the name of the taxpayer named in the return, if any, against whom no debt is claimed, the fact that a debt is not claimed against such taxpayer, the fact that such taxpayer is entitled to receive a refund if it is due him regardless of the debt asserted against his spouse, and that in order to obtain a refund due him such taxpayer must apply in writing for a hearing with the claimant agency named in the notice within thirty (30) days of the date of the mailing of the notice. If a taxpayer fails to apply in writing for such a hearing within thirty (30) days of the mailing of such notice, he will have waived his opportunity to contest the setoff.

(c) Upon receipt of funds transferred from the Department of Revenue pursuant to paragraph (b) of this subsection, the claimant agency shall deposit and hold such funds in an escrow account until a final determination of the validity of the debt.

(d) The claimant agency shall pay the Department of Revenue a fee, not to exceed Seventeen Dollars ($17.00) in each case in which a tax refund is identified as being available for offset. Such fees shall be deposited by the Department of Revenue into a special fund hereby created in the State Treasury, out of which the Legislature shall appropriate monies to defray expenses of the Department of Revenue in employing personnel to administer the provisions of this section.

(5)(a) When the claimant agency receives a protest or an application in writing from a taxpayer within thirty (30) days of the notice issued by the Department of Revenue, the claimant agency shall set a date to hear the protest and give notice to the taxpayer by registered or certified mail of the date so set. The time and place of such hearing shall be designated in such notice and the date set shall not be less than fifteen (15) days from the date of such notice. If, at the hearing, the sum asserted as due and owing is found not to be correct, an adjustment to the claim may be made. The claimant agency shall give notice to the debtor of its final determination as provided in paragraph (c) of this subsection.

(b) No issues shall be reconsidered at the hearing which have been previously litigated.

(c) If any debtor is dissatisfied with the final determination made at the hearing by the claimant agency, he may appeal the final determination to the circuit court of the county in which the main office of the claimant agency is located by filing notice of appeal with the administrative head of the claimant agency and with the clerk of the circuit court of the county in which the appeal shall be taken within thirty (30) days from the date the notice of final determination was given by the claimant agency.

(6)(a) Upon final determination of the amount of the debt due and owing by means of hearing or by the taxpayer's default through failure to comply with timely request for review, the claimant agency shall remove the amount of the debt due and owing from the escrow account and credit such amount to the debtor's obligation.

(b) Upon transfer of the debt due and owing from the escrow account to the credit of the debtor's account, the claimant agency shall notify the debtor in writing of the finalization of the setoff. Such notice shall include a final accounting if the refund which was set off, including the amount of the refund to which the debtor was entitled prior to the setoff, the amount of the debt due and owing, the amount of the collection fee paid to the Department of Revenue, the amount of the refund in excess of the debt which was returned to the debtor by the Department of Revenue, and the amount of the funds transferred to the claimant agency in excess of the debt determined to be due and owing at a hearing, if such a hearing was held. At such time, the claimant agency shall refund to the debtor the amount of the claimed debt originally certified and transferred to it by the Department of Revenue in excess of the amount of debt finally found to be due and owing.

(7)(a) Notwithstanding the provision that prohibits disclosure by the Department of Revenue of the contents of taxpayer records or information and notwithstanding any other confidentiality statute, the Department of Revenue may provide to a claimant agency all information necessary to accomplish and effectuate the intent of the section.

(b) The information obtained by claimant agency from the Department of Revenue in accordance with the provisions of this section shall retain its confidentiality and shall only be used by a claimant agency in the pursuit of its debt collection duties and practices; and any employee or prior employee of any claimant agency who unlawfully discloses any such information for any other purpose, except as specifically authorized by law, shall be subject to the same penalties specified by law for unauthorized confidential information by an agent or employee of the Department of Revenue.

SOURCES: Laws, 2005, ch. 400, § 2; Laws, 2009, ch. 492, § 138, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Amendment Notes — The 2009 amendment, effective from and after July 1, 2010, substituted "'Department' or 'Department of Revenue' means the Department of Revenue" for "'Commission' means the State Tax Commission" in (1)(d); substituted "department" for "commission" everywhere it appears in (1)(e), (3) and (4); substituted "Department of Revenue" for "commission" the second time it appears in (4)(b), the second and third time it appears in (6)(b), and the first time it appears in (7)(a) and (b), and everywhere it appears in (4)(c) and (d) and (5); substituted "Department of Revenue" for "State Tax Commission" the second time it appears in (7)(a) and (b); and in (6)(b), deleted "commissioner's" preceding "collection fee" and inserted "paid to the Department of Revenue" thereafter.

Cross References — Department of revenue generally, see §§ 27-3-1 et seq.

Commissioner of revenue of the department of revenue, see §§ 27-3-3, 27-3-4.

§ 71-5-391. Use of administrative funds for payment of fees associated with receipt of electronic payments.

The executive director of the department may use available administrative funds for payment of fees associated with receipt of electronic payments made to the department. In the event the fees are charged to an employer through a payment process external to the department, amounts not to exceed the charges for the electronic transaction may be credited to the employer and used as an offset to future indebtedness.

SOURCES: Laws, 2007, ch. 606, § 1, eff from and after July 1, 2007.

ARTICLE 9.

UNEMPLOYMENT COMPENSATION FUND.

SEC.	
71-5-451.	Establishment and control [Repealed effective July 1, 2014].
71-5-453.	Accounts and deposits.
71-5-455.	Withdrawals.
71-5-457.	Unemployment trust fund used for payment of administrative expenses [Repealed effective July 1, 2014].
71-5-459.	Management of funds upon discontinuance of unemployment trust fund.

§ 71-5-451. Establishment and control [Repealed effective July 1, 2014].

There is established as a special fund, separate and apart from all public monies or funds of this state, an Unemployment Compensation Fund, which shall be administered by the department exclusively for:

(a) All contributions collected under this chapter;

(b) Interest earned upon any monies in the fund;

(c) Any property or securities acquired through the use of monies belonging to the fund;

(d) All earnings of such property or securities;

(e) All monies credited to this state's account in the Unemployment Trust Fund pursuant to the Social Security Act, 42 USCS, Section 1104; and

(f) By way of reimbursement in accordance with Section 204 of the Federal-State Extended Unemployment Compensation Act of 1970 (84 Stat. 711). All monies in the fund shall be mingled and undivided.

SOURCES: Codes, 1942, § 7394; Laws, 1940, ch. 295; Laws, 1958, ch. 536, § 1(a); Laws, 1964, ch. 448, § 1(a); Laws, 1971, ch. 519, § 10; Laws, 1982, ch. 383, § 3; Laws, 2004, ch. 572, § 36; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 36; reenacted without change, Laws, 2010, ch. 559, § 35; reenacted without change, Laws, 2011, ch. 471, § 36, eff from and after July 1, 2011.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, and as amended by Laws of 2011, ch. 471, § 59, provides:

"SECTION 60. This act shall stand repealed on July 1, 2014."

Amendment Notes — The 2010 amendment reenacted the section without change.

The 2011 amendment reenacted the section without change.

Cross References — Reciprocal arrangements for reimbursements from other states or the federal government, see § 71-5-13.

Federal Aspects — The Federal-State Extended Unemployment Compensation Act of 1970, referred to in (f), is the Act of August 10, 1970, P.L. 91-373, 84 Stat. 708, codified at 26 USCS §§ 3304 et seq.

RESEARCH REFERENCES

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation § 2.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 330, 346, 347.

§ 71-5-453. Accounts and deposits.

The State Treasurer shall be the ex officio treasurer and custodian of the fund, and shall administer such fund in accordance with the directions of the department, and shall issue his warrants upon it in accordance with such regulations as the department shall prescribe. He shall maintain within the fund three (3) separate accounts: (a) a clearing account, (b) an unemployment trust fund account, and (c) a benefit account. All monies payable to the fund, upon receipt thereof by the department, shall be forwarded to the Treasurer, who shall immediately deposit them in the clearing account. Refunds payable pursuant to Section 71-5-383 may be paid from the clearing account upon warrants issued by the Treasurer under the direction of the department. Transfers pursuant to Section 71-5-114 of all interest, penalties and damages collected shall be made to the Special Employment Security Administration Fund as soon as practicable after the end of each calendar quarter. Workforce training enhancement contributions shall be deposited into the workforce enhancement training holding fund account as described in this section. All other monies in the clearing account shall be immediately deposited with the Secretary of the Treasury of the United States of America to the credit of the account of this state in the Unemployment Trust Fund, established and maintained pursuant to Section 904 of the Social Security Act, as amended, any provisions of law in this state relating to the deposit, administration, release, or disbursement of monies in the possession or custody of this state to the contrary notwithstanding. The benefit account shall consist of all monies requisitioned from this state's account in the Unemployment Trust Fund. Except as herein otherwise provided, monies in the clearing and benefit accounts may be deposited by the Treasurer, under the direction of the department, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the Unemployment Compensation Fund under this chapter. A Mississippi Workforce Training Enhancement Fund holding account shall be established by and maintained under the control of the Mississippi Department of Employment Security. The workforce training enhancement contributions collected pursuant to the provisions in this chapter shall be transferred from the clearing account into the Mississippi Workforce Training Enhancement Fund holding account on the same schedule and under the same conditions as funds transferred to the Unemployment Compensation Fund. Such funds shall remain on deposit in the workforce training enhancement fund account for a period of sixty (60) days. After such period, contributions will be transferred to the Mississippi Workforce Enhancement Training Fund by the Mississippi Department of Employment Security, within thirty (30) days. One such transfer shall be made monthly, but the department, in its discretion, may make additional transfers in any month. In the event such funds transferred are subsequently determined to be erroneously paid or collected, or if deposit of such funds is denied or rejected by the banking institution for any reason, or deposits are unable to clear drawer's account for any reason, the funds must be reimbursed by the recipient of such funds within thirty (30) days of mailing of notice by the Mississippi Department of Employment Security demanding such refund, unless funds are available in the workforce training enhancement fund holding account. In that event such amounts shall be immediately withdrawn from the workforce enhancement training holding fund account by the Mississippi Department of Employment Security and redeposited into the clearing account.

SOURCES: Codes, 1942, § 7395; Laws, 1940, ch. 295; Laws, 1958, ch. 536, § 1(b); Laws, 1964, ch. 448, § 1(b); Laws, 1982, ch. 383, § 4; Laws, 2005, ch. 437, § 3, eff from and after Jan. 1, 2005.

Cross References — Reimbursements for benefits paid under reciprocal arrangements with other states and the federal government, see § 71-5-13.

Federal Aspects — Section 904 of the Social Security Act, see 42 USCS § 1104.

§ 71-5-455. Withdrawals.

Monies shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the commission, except that monies credited to this state's account pursuant to Section 903 of the Social Security Act, as amended, shall be used exclusively as provided in Section 71-5-457. No monies in the unemployment compensation fund shall be used to pay interest on any funds that might be borrowed for the purposes of this chapter, but any such interest that might be due shall be paid from other sources. The commission shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amount standing to this state's account therein, as it deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such monies in the benefit account and shall issue his warrants thereon as hereinafter provided for the purpose of paying benefits. The commission shall requisition from time to time from the treasurer such lump sum amount as it deems necessary for the payment of benefits for a reasonable future period, and the treasurer shall thereupon issue to the commission his warrant on the benefit account for such lump sum as may be requisitioned. Such sums shall be immediately deposited by the commission in some bank within this state in an account to be known as the "benefit payment account," which shall be under the control of the commission and on which said benefit payment account the commission or its duly authorized representative is authorized to draw and issue its checks in payment of benefits to individuals entitled thereto under this chapter. Expenditures of such monies in the benefit account and benefit payment account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. All warrants issued by the treasurer shall bear the signature of the treasurer and the countersignature of a member of the commission or the commission's duly authorized agent for that purpose.

The commission shall require of such bank within this state as it may select as the depository of the "benefit payment account" security in a sum ten percent (10%) greater than the amounts on deposit in said account at any one (1) time, such security to consist of such securities or surety bond as are required by law of depositories of state funds; and the commission shall take such action as it may deem necessary to safeguard the custody of such security.

SOURCES: Codes, 1942, § 7396; Laws, 1940, ch. 295; Laws, 1958, ch. 536, § 1(c); Laws, 1964, ch. 448, § 1(c); Laws, 1984, ch. 301, § 3; Laws, 1994, ch. 303, § 3, eff from and after passage (approved February 28, 1994).

Editor's Note — Section 71-5-101 provides that the term "Employment Security Commission" shall mean the Mississippi Department of Employment Security.

Cross References — Withdrawals for benefits paid under reciprocal arrangements with other states or the federal government, see § 71-5-13.

Federal Aspects — Section 903 of the Social Security Act, referred to in the first paragraph, see 42 USCS § 1103.

ATTORNEY GENERAL OPINIONS

Section VII of the standardized Collateral Security Agreement does not authorize a violation of 71-5-455; it simply provides a maximum time for the correction of any breach of this statutory requirement. Lord, May 25, 1995, A.G. Op. #95-0159.

§ 71-5-457. Unemployment trust fund used for payment of administrative expenses [Repealed effective July 1, 2014].

(1) Except as otherwise provided in subsection (5), money credited to the account of this state in the Unemployment Trust Fund by the Secretary of the Treasury of the United States of America pursuant to the Social Security Act, 42 USCS Section 1103, may be requisitioned and used for the payment of expenses incurred for the administration of this law pursuant to a specific appropriation by the Legislature, provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which:

(a) Specifies the purposes for which such money is appropriated and the amounts appropriated therefor;

(b) Limits the period within which such money may be obligated to a period ending not more than two (2) years after the date of the enactment of the appropriation law; and

(c) Limits the amount which may be obligated during a twelve-month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which:

(i) The aggregate of the amounts credited to the account of this state pursuant to the Social Security Act, 42 USCS Section 1103, during the same twelve-month period and the thirty-four (34) preceding twelve-month periods exceeds.

(ii) The aggregate of the amounts obligated pursuant to this section and charged against the amounts credited to the account of this state during such thirty-five (35) twelve-month periods.

For the purposes of this section, amounts obligated during any such twelve-month period shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount obligated for administration during any such twelve-month period may be charged against any amount credited during such a twelve-month period earlier than the thirty-fourth preceding such period.

(2) Money credited to the account of this state pursuant to the Social Security Act, 42 USCS Section 1103, may not be withdrawn or used except for the payment of benefits and for the payment of expenses for the administration of this law and of public employment offices pursuant to this section.

(3) Money appropriated as provided herein for the payment of expenses of administration shall be requisitioned as needed for the payment of obligations incurred under such appropriation and, upon requisition, shall be deposited in

the Employment Security Administration Fund, from which such payments shall be made. Money so deposited shall, until expended, remain a part of the Unemployment Compensation Fund and, if it will not be expended, shall be returned promptly to the account of this state in the Unemployment Trust Fund.

(4) The thirty-five-year limitation provided in this section is no longer in force, effective October 1, 1991.

(5) Notwithstanding subsection (1), monies credited with respect to federal fiscal years 1999, 2000 and 2001 shall be used by the department solely for the administration of the unemployment compensation program.

SOURCES: Codes, 1942, § 7396.5; Laws, 1958, ch. 536, § 1(d); Laws, 1964, ch. 448, § 1(d); Laws, 1971, ch. 519, § 11; Laws, 1975, ch. 393; Laws, 1981, ch. 321, § 1; Laws, 1983, ch. 357; Laws, 1984, ch. 301, § 4; Laws, 1991, ch. 449 § 1; Laws, 1998, ch. 372, § 1; Laws, 2004, ch. 572, § 37; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 37; reenacted without change, Laws, 2010, ch. 559, § 36; reenacted without change, Laws, 2011, ch. 471, § 37, eff from and after July 1, 2011.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, and as amended by Laws of 2011, ch. 471, § 59, provides:

"SECTION 60. This act shall stand repealed on July 1, 2014."

Amendment Notes — The 2010 amendment reenacted the section without change.

The 2011 amendment reenacted the section without change.

Cross References — Employment security administration fund, see § 71-5-111.

Definition of "reserve ratio" with respect to exclusion of moneys appropriated for expenses of administration pursuant to this section, see § 71-5-355.

§ 71-5-459. Management of funds upon discontinuance of unemployment trust fund.

The provisions of Sections 71-5-451 through 71-5-459, to the extent that they relate to the unemployment trust fund, shall be operative only so long as such unemployment trust fund continues to exist and so long as the Secretary of the Treasury of the United States of America continues to maintain for this state a separate book account of all funds deposited therein by this state for benefit purposes and of money credited pursuant to Section 903 of the Social Security Act, as amended, together with this state's proportionate share of the earnings of such unemployment trust fund, from which no other state is permitted to make withdrawals. If and when such unemployment trust fund ceases to exist or such separate book account is no longer maintained, all moneys, properties, or securities therein belonging to the unemployment compensation fund of this state shall be transferred to the treasurer of the unemployment compensation fund, who shall hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the commission, in accordance with the provisions of this chapter, provided that such moneys shall be invested in the following readily marketable classes of securities: bonds or other interest bearing obligations of the United States of America, the State of Mississippi, and of any county;

consolidated school district, supervisors district road bonds, and municipal bonds of counties, cities, and towns of Mississippi; federal land bank bonds and home owners loan corporation bonds; Yazoo and Mississippi Delta Levee District bonds; Mississippi Levee District bonds; municipal bonds of cities with a population of one hundred thousand (100,000) and over located in the states of Louisiana, Texas, Arkansas, Alabama, Georgia, Florida, and Tennessee; and provided further that such investment shall at all times be so made that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits. The treasurer shall dispose of securities or other properties belonging to the unemployment compensation fund only under direction of the commission.

SOURCES: Codes, 1942, § 7397; Laws, 1940, ch. 295; Laws, 1958, ch. 536, § 1(e); Laws, 1964, ch. 448, § 1(e), eff from and after passage (approved June 6, 1964).

Editor's Note — Section 71-5-101 provides that the term "Employment Security Commission" shall mean the Mississippi Department of Employment Security.

Cross References — Receipt or payment of reimbursements under reciprocal arrangements with other states or the federal government, see § 71-5-13.

Federal Aspects — Section 903 of the Social Security Act, see 42 USCS § 1103.

ARTICLE 11.

BENEFITS.

SEC.	
71-5-501.	Payment.
71-5-503.	Weekly benefit amount [Repealed effective July 1, 2014].
71-5-505.	Weekly compensation for unemployment.
71-5-506.	Advice to claimants as to taxation of benefits; change of withholding status; deduction and withholding of tax.
71-5-507.	Duration.
71-5-509.	Seasonal workers.
71-5-511.	Eligibility conditions [Repealed effective July 1, 2014].
71-5-513.	Disqualifications [Repealed effective July 1, 2014].
71-5-515.	Filing.
71-5-516.	Disclosure of child support obligations on claim for benefits; deduction and withholding from benefit.
71-5-517.	Initial determination [Repealed effective July 1, 2014].
71-5-519.	Appeals [Repealed effective July 1, 2014].
71-5-521.	Appeal tribunals.
71-5-523.	Board of review [Repealed effective July 1, 2014].
71-5-525.	Procedure [Repealed effective July 1, 2014].
71-5-527.	Witness fees.
71-5-529.	Appeal to courts [Repealed effective July 1, 2014].
71-5-531.	Court review [Repealed effective July 1, 2014].
71-5-533.	Appeal by commission.
71-5-535.	Waiver of rights void.
71-5-537.	Limitation of fees.
71-5-539.	No assignment of benefits; exemptions.
71-5-541.	Construction [Repealed effective July 1, 2014].

71-5-543. Authorization to waive recovery of benefits paid to ineligible persons under certain circumstances.

§ 71-5-501. Payment.

Wages earned for services defined in Section 71-5-11(J)(15)(g), irrespective of when performed, shall not be included for purposes of determining eligibility under Section 71-5-511(e) or weekly benefit amount under Section 71-5-503 nor shall any benefits with respect to unemployment be payable under Section 71-5-505 on the basis of such wages. All benefits shall be paid through employment offices or such other agency or agencies as the commission may, by regulation, designate, in accordance with such regulations as the commission may prescribe. The commission may, by regulation, prescribe that benefits due and payable to claimants who die prior to the receipt or cashing of benefits checks may be paid to the legal representative, dependents, or next of kin, of the deceased as may be found by it to be equitably entitled thereto, and every such payment shall be deemed a valid payment to the same extent as if made to the legal representative of the decedent.

SOURCES: Codes, 1942, § 7373; Laws, 1940, ch. 295, § 1; Laws, 1948, ch. 412, § 2a; Laws, 1952, ch. 383, § 1a; Laws, 1956, ch. 404, § 1a; Laws, 1958, ch. 533, § 1a; Laws, 1968, ch. 561, § 1a; Laws, 1971, ch. 519, § 1; Laws, 2002, ch. 562, § 4, eff from and after July 1, 2002.

Editor's Note — Section 71-5-101 provides that the term "Employment Security Commission" shall mean the Mississippi Department of Employment Security.

Cross References — Payments made under reciprocal arrangements with other states or the federal government, see § 71-5-13.

Disqualification for benefits, see § 71-5-513.

JUDICIAL DECISIONS

1. In general.

An employee who is terminated without pay after indicating his or her intent to resign may be considered discharged and eligible for state unemployment benefits. Coleman v. Mississippi Emp. Sec. Comm'n, 662 So. 2d 626 (Miss. 1995).

RESEARCH REFERENCES

ALR. Repayment of unemployment compensation benefits erroneously paid. 90 A.L.R.3d 987.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 353, 508.

Practice References. David L. Bacon, Employee Benefits Guide (Matthew Bender).

Janice Goodman, Employee Rights Litigation: Pleading and Practice (Matthew Bender).

Shawe and Rosenthal, Employment Law Deskbook (Matthew Bender).

§ 71-5-503. Weekly benefit amount [Repealed effective July 1, 2014].

An individual's weekly benefit amount for a benefit year shall be one-twenty-sixth (1/26) of his total wages for insured work paid during that quarter of his base period in which such total wages were highest, computed to the next lower multiple of One Dollar ($1.00), if not a multiple of One Dollar ($1.00).

On or before June 15 of each year, the total wages reported on contribution reports for the preceding calendar year shall be divided by the average monthly number of insured workers (determined by dividing the total insured workers reported on contribution reports pursuant to the regulations of the commission for the preceding year by twelve (12)). The average annual wage thus obtained shall be divided by fifty-two (52) and the average weekly wage thus determined rounded to the nearest cent. Sixty percent (60%) of this amount, rounded to the nearest dollar, shall constitute the maximum "weekly benefit amount" paid to any individual whose benefit year commences on or after July 1 of such year and prior to July 1 of the next following year; provided however, that the maximum weekly benefit amount shall not exceed Two Hundred Ten Dollars ($210.00) for any benefit year that begins on or after July 1, 2002, and shall not exceed Two Hundred Thirty Dollars ($230.00) for any benefit year that begins on or after July 1, 2008, and shall not exceed Two Hundred Thirty-five Dollars ($235.00) for any benefit year that begins on or after July 1, 2009. The minimum weekly benefit amount for the individual shall be Thirty Dollars ($30.00). If an individual's weekly benefit amount would compute to less than the said minimum, then such individual would be entitled to no benefits.

An individual's weekly benefit amount, as determined at the beginning of his benefit year, shall constitute his weekly benefit amount throughout such benefit year.

The Mississippi Department of Employment Security, with the assistance of the United States Department of Labor, is directed to generate actuarially sound models for computation of weekly benefit amounts. Such models shall include scenarios for increasing the weekly benefit amounts at each increment from the minimum to the maximum amount and the impact such increments would have on the Unemployment Compensation Fund. Such report shall be provided to the Mississippi Legislature on or before December 31, 2008.

This section shall stand repealed on July 1, 2014.

SOURCES: Codes, 1942, § 7374; Laws, 1940, ch. 295, § 1; Laws, 1948, ch. 412, § 2b; Laws, 1952, ch. 383, § 1b; Laws, 1956, ch. 404, § 1b; Laws, 1958, ch. 533, § 1b; Laws, 1968, ch. 561, § 1b; Laws, 1971, ch. 519, § 2; Laws, 1974, ch. 570, § 1; Laws, 1976, ch. 382; Laws, 1979, ch. 465, § 3; Laws, 1982, ch. 349, § 2; Laws, 1983, ch. 364, § 1; Laws, 1984, ch. 438; Laws, 1986, ch. 316, § 1; Laws, 1988, ch. 322, § 2; Laws, 1991, ch. 511, § 3; Laws, 1995, ch. 507, § 6; Laws, 1998, ch. 423, § 1; Laws, 2001, ch. 413, § 1; Laws, 2008, 1st Ex Sess, ch. 43, § 1; reenacted and amended, Laws, 2010, ch. 559, § 37; Laws, 2011, ch. 471, § 38, eff from and after July 1, 2011.

Amendment Notes — The 2010 amendment reenacted and amended the section and substituted "July 1, 2011" for "July 1, 2010" in the last paragraph.

The 2011 amendment substituted "July 1, 2014" for "July 1, 2011" in the last paragraph.

Cross References — Computation of benefits under reciprocal arrangements with other states or the federal government, see § 71-5-13.

Exclusion of jury duty pay and "inactive duty training" compensation and "unit training assembly" compensation payable to member of any reserve component from computation of weekly unemployment benefits, see § 71-5-505.

JUDICIAL DECISIONS

1. In general.

A woman who, pursuant to an agreement with her employer, left work temporarily to have a baby, and who was laid off during that period due to a lack of work, did not leave work voluntarily without good cause within the meaning of § 71-5-513. Smith v. Mississippi Emp. Sec. Comm'n, 344 So. 2d 137 (Miss. 1977).

The purpose of this statute is not to protect persons self-employed, and only wage earners can become eligible for unemployment compensation benefits. Mississippi Emp. Sec. Comm'n v. Medlin, 252 Miss. 146, 171 So. 2d 496 (1965).

RESEARCH REFERENCES

CJS. 81 C.J.S., Social Security and Public Welfare § 510.

§ 71-5-505. Weekly compensation for unemployment.

(1) For weeks beginning on or after July 1, 1991, each eligible individual who is totally unemployed or part totally unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his weekly benefit amount less that part of his wages, if any, payable to him with respect to such week which is in excess of Forty Dollars ($40.00). Such individuals must have been totally unemployed or part totally unemployed for a waiting period of one (1) week during which he earned less than his weekly benefit amount plus Forty Dollars ($40.00). Such benefit for a benefit year effective on or after October 1, 1983, if not a multiple of One Dollar ($1.00), shall be computed to the next lower multiple of One Dollar ($1.00). Provided, however, that remuneration for "inactive duty training" or "unit training assembly" payable to such eligible individual who is a member of any of the reserve components, or remuneration for jury duty pursuant to a lawfully issued summons therefor payable to such eligible individual, shall not be considered wages which serve to reduce the otherwise payable benefit amount.

In determining whether an eligible individual is unemployed during a week, the date of commencing a shift shall determine the week for which the earnings are deducted.

(2) However, the one-week waiting period described herein shall be waived if the President of the United States declares a major disaster in accordance with Section 401 of The Robert T. Stafford Disaster Relief and Emergency Assistance Act. The department, in its discretion, shall have the

authority to noncharge an employer account for any benefits paid for unemployment due directly to such disaster.

SOURCES: Codes, 1942, § 7375; Laws, 1940, ch. 295, § 1; Laws, 1948, ch. 412, § 2c; Laws, 1952, ch. 383, § 1c; Laws, 1956, ch. 404, § 1c; Laws, 1958, ch. 533, § 1c; Laws, 1968, ch. 561, § 1c; Laws, 1979, ch. 381; Laws, 1983, ch. 364, § 2; Laws, 1984, ch. 498, § 1; Laws, 1991, ch. 511, § 4; Laws, 1999, ch. 306, § 1; Laws, 2007, ch. 606, § 12, eff from and after July 1, 2007.

Cross References — Definition of "unemployed", as used in this chapter, referenced to weekly benefit amount as computed and adjusted in this section, see § 71-5-11.

Comparable Laws from other States — Alabama Code, § 25-4-54.

Louisiana Revised Statutes Annotated, § 23:1531 et seq.

Texas Labor Code, § 204.041 et seq.

Federal Aspects — Federal Unemployment Tax Act — credits against tax; approval of state laws, 26 USCS §§ 3302, 3304.

Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in (2), is Act May 22, 1974, P.L. 93-288, 88 Stat. 143, which is codified generally as 42 USCS §§ 5121 et seq.

JUDICIAL DECISIONS

1. In general.

Employment was not a prerequisite to deducting monies earned by a person during any week in which the person received benefits, and unemployment benefits claimant's bi-weekly payments for service as a part-time alderman constituted wages under Miss Code Ann. § 71-5-11 P(1), which wages should have been deducted from the benefits under Miss Code Ann. § 71-5-505(1). Miss. Emp. Sec. Comm'n v. Jones, 826 So. 2d 77 (Miss. 2002).

A woman who, pursuant to an agreement with her employer, left work temporarily to have a baby, and who was laid off during that period due to a lack of work, did not leave work voluntarily without good cause within the meaning of § 71-5-513. Smith v. Mississippi Emp. Sec. Comm'n, 344 So. 2d 137 (Miss. 1977).

RESEARCH REFERENCES

ALR. Part-time or intermittent workers as covered by or as eligible for benefits under state unemployment compensation act. 95 A.L.R.3d 891.

CJS. 81 C.J.S., Social Security and Public Welfare § 510.

§ 71-5-506. Advice to claimants as to taxation of benefits; change of withholding status; deduction and withholding of tax.

(1) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, be advised that:

(a) Unemployment compensation is subject to federal, state and local income tax;

(b) Requirements exist pertaining to estimated tax payments;

(c) The individual may elect to have federal income tax deducted and withheld from the individual's payment of unemployment compensation at the amount specified in the Federal Internal Revenue Code;

(d) The individual shall be permitted to change a previously elected withholding status.

(2) Amounts deducted and withheld from unemployment compensation shall remain in the unemployment fund until transferred to the federal taxing authority as a payment of income tax.

(3) The commission shall follow all procedures specified by the United States Department of Labor and the Federal Internal Revenue Service pertaining to the deducting and withholding of income tax.

(4) Amounts shall be deducted and withheld in accordance with the priorities established in regulations developed by the commission.

SOURCES: Laws, 1996, ch. 464, § 1, eff from and after July 1, 1996.

Editor's Note — Section 71-5-101 provides that the term "Employment Security Commission" shall mean the Mississippi Department of Employment Security.

§ 71-5-507. Duration.

Any otherwise eligible individual shall be entitled during any benefit year to a total amount of regular benefits equal to twenty-six (26) times his weekly benefit amount or one-third (⅓) of his total wages for insured work paid during his base period, whichever is the lesser. Provided, that for a benefit year effective prior to October 1, 1983, if such total amount of benefits is not a multiple of One Dollar ($1.00), it shall be computed to the next higher multiple of One Dollar ($1.00); and for a benefit year effective on or after October 1, 1983, if such total amount of benefits is not a multiple of One Dollar ($1.00), it shall be computed to the next lower multiple of One Dollar ($1.00). An individual's total amount of regular benefits as determined at the beginning of his benefit year shall constitute his total amount of regular benefits throughout such benefit year.

SOURCES: Codes, 1942, § 7376; Laws, 1940, ch. 295, § 1; Laws, 1948, ch. 412, § 2d; Laws, 1952, ch. 383, § 1d; Laws, 1956, ch. 404, § 1d; Laws, 1958, ch. 533, § 1d; Laws, 1968, ch. 561, § 1d; Laws, 1971, ch. 519, § 3; Laws, 1983, ch. 364, § 3, eff from and after passage (approved March 16, 1983).

Cross References — Duration of benefits payable under reciprocal arrangements with other states or the federal government, see § 71-5-13.

JUDICIAL DECISIONS

1. In general.

Where evidence amply supported the finding of the commission that an employee who quit her job in a moment of pique during a brief misunderstanding with her employer had quit suitable employment voluntarily and was not entitled to benefits, the court was without statutory authority to enter a contrary judgment. Mississippi Emp. Sec. Comm'n v.

Rakestraw, 254 Miss. 56, 179 So. 2d 830 (1965).

§ 71-5-509. Seasonal workers.

(1) For the purposes of this section, cotton ginning and professional baseball only are classified as seasonal industries.

(2) The term "seasonal worker" means an individual who is employed in a seasonal industry, and who has base period wages paid on and after July 1, 1983, in such seasonal industry, except that the term shall not include workers in such industry where employment continues substantially throughout the year. Any individual who has earnings in a seasonal industry having a seasonal operating period within the limits shown in the first column at the end of this subsection, and who has base period wages earned in such seasonal industry in the nonoperating season of such seasonal industry in an amount equal to the amount specified on the corresponding line of the second column at the end of this subsection, shall be considered as having employment which continues substantially throughout the year and shall not be considered a seasonal worker.

Operating Period of Seasonal Industry	Wages Earned in Seasonal Industry During Nonoperating Period
27-36 Weeks	24 Times Weekly Benefit Amount
6-26 Weeks	30 Times Weekly Benefit Amount

(3) The commission shall prescribe fair and reasonable general rules consistent with this chapter which are applicable to seasonal workers for determining the period or periods during which benefits shall be payable to them. The commission may prescribe fair and reasonable general rules with respect to such other matters relating to benefits for seasonal workers as the commission finds necessary and consistent with the policy and purposes of this chapter.

SOURCES: [Prior § 71-5-509, Codes, 1942, § 7377, Laws, 1940, ch. 295, repealed by implication by Laws, 1948, ch. 412, § 2] Laws, 1983, ch. 369; Laws, 1986, ch. 319, § 2, eff from and after passage (approved March 13, 1986).

Editor's Note — Section 71-5-101 provides that the term "Employment Security Commission" shall mean the Mississippi Department of Employment Security.

RESEARCH REFERENCES

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation § 39.

CJS. 81 C.J.S., Social Security and Public Welfare § 510.

§ 71-5-511. Eligibility conditions [Repealed effective July 1, 2014].

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

(a)(i) He has registered for work at and thereafter has continued to report to the department in accordance with such regulations as the department may prescribe; except that the department may, by regulation, waive or alter either or both of the requirements of this subparagraph as to such types of cases or situations with respect to which it finds that compliance with such requirements would be oppressive or would be inconsistent with the purposes of this chapter; and

(ii) He participates in reemployment services, such as job search assistance services, if, in accordance with a profiling system established by the department, it has been determined that he is likely to exhaust regular benefits and needs reemployment services, unless the department determines that:

1. The individual has completed such services; or

2. There is justifiable cause for the claimant's failure to participate in such services.

(b) He has made a claim for benefits in accordance with the provisions of Section 71-5-515 and in accordance with such regulations as the department may prescribe thereunder.

(c) He is able to work and is available for work.

(d) He has been unemployed for a waiting period of one (1) week. No week shall be counted as a week of unemployment for the purposes of this subsection:

(i) Unless it occurs within the benefit year which includes the week with respect to which he claims payment of benefits;

(ii) If benefits have been paid with respect thereto;

(iii) Unless the individual was eligible for benefits with respect thereto, as provided in Sections 71-5-511 and 71-5-513, except for the requirements of this subsection.

(e) For weeks beginning on or before July 1, 1982, he has, during his base period, been paid wages for insured work equal to not less than thirty-six (36) times his weekly benefit amount; he has been paid wages for insured work during at least two (2) quarters of his base period; and he has, during that quarter of his base period in which his total wages were highest, been paid wages for insured work equal to not less than sixteen (16) times the minimum weekly benefit amount. For benefit years beginning after July 1, 1982, he has, during his base period, been paid wages for insured work equal to not less than forty (40) times his weekly benefit amount; he has been paid wages for insured work during at least two (2) quarters of his base period, and he has, during that quarter of his base period in which his total wages were highest, been paid wages for insured work equal to not less than twenty-six (26) times the minimum weekly benefit amount. For purposes of this subsection, wages shall be counted as "wages for insured work" for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the date on which the employing unit by which such wages were paid has satisfied the conditions of Section 71-5-11, subsection I, or Section 71-5-361, subsection (3), with respect to becoming an employer.

(f) No individual may receive benefits in a benefit year unless, subsequent to the beginning of the next preceding benefit year during which he received benefits, he performed service in "employment" as defined in Section 71-5-11, subsection J, and earned remuneration for such service in an amount equal to not less than eight (8) times his weekly benefit amount applicable to his next preceding benefit year.

(g) Benefits based on service in employment defined in Section 71-5-11, subsection J(3) and J(4), and Section 71-5-361, subsection (4) shall be payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to this chapter, except that benefits based on service in an instructional, research or principal administrative capacity in an institution of higher learning (as defined in Section 71-5-11, subsection O) with respect to service performed prior to January 1, 1978, shall not be paid to an individual for any week of unemployment which begins during the period between two (2) successive academic years, or during a similar period between two (2) regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or contracts to perform services in any such capacity for any institution or institutions of higher learning for both such academic years or both such terms.

(h) Benefits based on service in employment defined in Section 71-5-11, subsection J(3) and J(4), shall be payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this chapter, except that:

(i) With respect to service performed in an instructional, research or principal administrative capacity for an educational institution, benefits shall not be paid based on such services for any week of unemployment commencing during the period between two (2) successive academic years, or during a similar period between two (2) regular but not successive terms, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual, if such individual performs such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms, and provided that subsection (g) of this section, shall apply with respect to such services prior to January 1, 1978. In no event shall benefits be paid unless the individual employee was terminated by the employer.

(ii) With respect to services performed in any other capacity for an educational institution, benefits shall not be paid on the basis of such services to any individual for any week which commences during a period between two (2) successive academic years or terms, if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms, except that if compensation is denied to any individual under this subparagraph and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this clause. In no event shall benefits be paid unless the individual employee was terminated by the employer.

(iii) With respect to services described in subsection (h)(i) and (ii), benefits shall not be payable on the basis of services in any such capacities to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the first of such academic years or terms, or in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

(iv) With respect to any services described in subsection (h)(i) and (ii), benefits shall not be payable on the basis of services in any such capacities as specified in subsection (h)(i), (ii) and (iii) to any individual who performed such services in an educational institution while in the employ of an educational service agency. For purposes of this subsection, the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.

(v) With respect to services to which Sections 71-5-357 and 71-5-359 apply, if such services are provided to or on behalf of an educational institution, benefits shall not be payable under the same circumstances and subject to the same terms and conditions as described in subsection (h)(i), (ii), (iii) and (iv).

(i) Subsequent to December 31, 1977, benefits shall not be paid to any individual on the basis of any services substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two (2) successive sports seasons (or similar periods) if such individual performs such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods).

(j)(i) Subsequent to December 31, 1977, benefits shall not be payable on the basis of services performed by an alien, unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of Section 203(a)(7) or Section 212(d)(5) of the Immigration and Nationality Act).

(ii) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(iii) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his alien status shall be made, except upon a preponderance of the evidence.

(k) An individual shall be deemed prima facie unavailable for work, and therefore ineligible to receive benefits, during any period which, with respect to his employment status, is found by the department to be a holiday or vacation period.

(*l*) A temporary employee of a temporary help firm is considered to have left the employee's last work voluntarily without good cause connected with the work if the temporary employee does not contact the temporary help firm for reassignment on completion of an assignment. A temporary employee is not considered to have left work voluntarily without good cause connected with the work under this paragraph unless the temporary employee has been advised in writing:

(i) That the temporary employee is obligated to contact the temporary help firm on completion of assignments; and

(ii) That unemployment benefits may be denied if the temporary employee fails to do so.

SOURCES: Codes, 1972, § 7378; Laws, 1940, ch. 295, § 2; Laws, 1948, ch. 412, § 3; Laws, 1954, ch. 353, § 1; Laws, 1958, ch. 533, § 2; Laws, 1968, ch. 561, § 2; Laws, 1971, ch. 519, § 4; Laws, 1977, ch. 497, § 7; Laws, 1978, ch. 339, § 2; Laws, 1981, ch. 466, § 1; Laws, 1982, ch. 480, § 2; Laws, 1983, ch. 358; Laws, 1984, ch. 498, § 2; Laws, 1990, ch. 417, § 1; Laws, 1994, ch. 357, § 1; Laws, 1995, ch. 507, § 7; Laws, 2004, ch. 572, § 38; Laws, 2007, ch. 606, § 13; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 38; reenacted without change, Laws, 2010, ch. 559, § 380; reenacted without change, Laws, 2011, ch. 471, § 39, eff from and after July 1, 2011.

Editor's Note — Laws of 1977, ch. 497, § 10, provides:

"SECTION 10. In the event the provisions of P.L. 94-566, the Unemployment Compensation Amendments of 1976, which mandate unemployment insurance coverage for state and local government employees, are declared unconstitutional, the amendments, which mandate unemployment insurance coverage for state and local government employees, adopted to Sections 71-5-11, 71-5-351, 71-5-355, 71-5-357, 71-5-359, 71-5-361, 71-5-511, 71-5-513 and 71-5-541, Mississippi Code of 1972, at the 1977 Regular Session of the Legislature shall stand repealed."

Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, and as amended by Laws of 2011, ch. 471, § 59, provides:

"SECTION 60. This act shall stand repealed on July 1, 2014."

Amendment Notes — The 2010 amendment reenacted the section without change.

The 2011 amendment reenacted the section without change.

Cross References — Definition of terms qualifying eligibility, see § 71-5-11.

Eligibility under reciprocal arrangements with other states or the federal government, see § 71-5-13.

Inclusion of wages for previously uncovered services in determining modified rates of employer contributions, see § 71-5-355.

Regulations governing payment of benefits to employees of nonprofit organizations, see § 71-5-357.

The liability of governmental entities to make payments to the unemployment fund with respect to benefits paid to individuals whose base-period wages include wages for previously uncovered services as defined in this section, see § 71-5-359.

Employers subject to payment of benefits, see § 71-5-361.

Payment of benefits, see § 71-5-501.

Exclusion of jury duty pay and "inactive duty training" compensation and "unit training Assembly" compensation payable to member of any reserve component from computation of weekly unemployment benefits, see § 71-5-505.

Disqualification for benefits, see § 71-5-513.

Effect of jury duty or medical emergency on determination of able and available requirements, see § 71-5-541.

Federal Aspects — The Immigration and Nationality Act appears as 8 USCS §§ 1101 et seq.

The Federal Unemployment Tax Act appears as 26 USCS §§ 3301 et seq.

JUDICIAL DECISIONS

1. In general.
2. "Available for work."
3. Religious beliefs.
4. Misconduct.
5. Holiday and vacation periods.
6. Medical leave.
7. "Termination."

1. In general.

Employee admitted she voluntarily left her job in Mississippi to pursue educational opportunities. Thus, pursuant to Miss. Code Ann. § 71-5-513 A(1)(a) she was not entitled to unemployment benefits, and under Miss. Code Ann. § 71-5-19(4), she was obligated to repay the benefits to which she was not entitled. Westbrook v. Miss. Empl. Sec. Comm'n, 910 So. 2d 1135 (Miss. Ct. App. 2005).

The purpose of this statute is not to protect persons self-employed, and only wage earners can become eligible for unemployment compensation benefits. Mississippi Emp. Sec. Comm'n v. Medlin, 252 Miss. 146, 171 So. 2d 496 (1965).

The unemployment compensation law makes no distinction between union and nonunion members. Mills v. Mississippi Emp. Sec. Comm'n, 228 Miss. 789, 89 So. 2d 727, 56 A.L.R.2d 1010 (1956).

Compliance with the statute or rules requiring an unemployment claimant to register for work and file a claim for benefits at the public unemployment office, and to continue to report at stated intervals during the waiting period, could not be waived by a mere receptionist in the waiting room of the employment office, and the claimant did not bring himself within either the terms of the statute or the rules and regulations prescribed thereunder, so as to be entitled to the compensation allowed, by showing that he presented his social security card to one of the ladies in the front office of the local unemployment compensation commission and that she informed him that he would have to get his compensation benefits from the State of Tennessee, his employer being a Tennessee corporation and his employment being in that state. Unemployment Comp. Comm'n v. Barlow, 191 Miss. 156, 1 So. 2d 241 (1941).

2. "Available for work."

Claimant who limited his availability for employment to work for a specific wage that was excessive for an entry-level type sedentary or clerical position in the state and solely based on his particular needs and circumstances was not entitled to unemployment insurance benefits because he was not unequivocally exposed to the labor market. Wren v. Miss. Emp. Sec. Comm'n, 821 So. 2d 919 (Miss. Ct. App. 2002).

A claimant is not required to produce medical documentation that she has been unconditionally released to return to work after an injury; the only requirement is that she show that she is able and available to work. Mickle v. Mississippi Emp. Sec. Comm'n, 765 So. 2d 1259 (Miss. 2000).

A conclusion that a claimant was unable and unavailable for work was not supported by the evidence where (1) the appeals referee did not find that the claimant's injury actually prevented her from working, but denied her claim because she had "failed to submit medical documentation to show that she has been released for full time work," (2) the only testimony at the hearing was by the claimant, and (3) the only evidence contrary to her positive assertions that she was able and available to work was her physician' release which placed certain restrictions on her return to work and her failure to produce a complete release. Mickle v. Mississippi Emp. Sec. Comm'n, 765 So. 2d 1259 (Miss. 2000).

Substantial evidence supported the conclusion that the claimant failed to prove that she was able to accept suitable work pursuant to subsection (c) of this section where her most recent release from her physician placed restrictions on her ability to secure employment. Mickle v. Mississippi Empl. Sec. Comm'n, — So. 2d —, 1999 Miss. App. LEXIS 584 (Miss. Ct. App. Sept. 28, 1999), reversed by, remanded by 765 So. 2d 1259, 2000 Miss. LEXIS 195, Unemployment Ins. Rep. (CCH) P8278 (Miss. 2000).

A diesel machinist was available to, and for, work within the meaning of § 71-5-511(c) and thus would be entitled to unemployment benefits, where the machinist had worked for an employer for six years, he had been working a second shift full-time and attending diesel mechanical school full-time when he was laid off, where he attended diesel mechanical school in order to improve his skill and which would be beneficial to his employer once he resumed work, and where he would terminate his schooling and work on whatever shift the employer required without limitation or restriction. Mississippi Emp. Sec. Comm'n v. McLeod, 419 So. 2d 207 (Miss. 1982).

A claimant was not available for work and was therefore not entitled to unemployment insurance benefits where he had refused to return to work at his former employer's for a lower salary, or to accept work anywhere else for less than $10 per hour. Mississippi Emp. Sec. Comm'n v. Swilley, 408 So. 2d 61 (Miss. 1981).

Long-distance telephone operators who declined offers to transfer to neighboring towns when their office was closed were improperly granted unemployment insurance where the distance to be traveled did not render the available work unsuitable and where few such jobs were available in the city in which they had been working; thus, the operators had unreasonably restricted the terms and conditions under which they would accept employment and were not "available for work." South Cent. Bell Tel. Co. v. Mississippi Emp. Sec. Comm'n, 357 So. 2d 312 (Miss. 1978).

An unemployed individual is not "available for work" as required by this section [Code 1942, § 7378], and is ineligible for benefits where he refuses nonunion employment by stating that he would not work for less than the union scale fixed by contract duly negotiated through collective bargaining. Mills v. Mississippi Emp. Sec. Comm'n, 228 Miss. 789, 89 So. 2d 727, 56 A.L.R.2d 1010 (1956).

3. Religious beliefs.

A public school teacher's wearing of a head-wrap as an expression of her religious and cultural heritage as a member of the African Hebrew Israelites in violation of the school's dress code was constitutionally protected religious and cultural expression, such that the Mississippi Employment Security Commission had no authority to deny her claim for unemployment compensation benefits after she was discharged for insubordination when she refused to discontinue wearing the headwrap, even though there is no specific tenant of the African Hebrew Israelites mandating that women wear headdress, the teacher was not a regular participant in the organized activities of a particular church, synagogue or other religious body, she might have been "selective in wearing the traditional head-wrap" in that at times she did not wear it, and even though her conduct may have been misconduct had it not been constitutionally protected expression. Mississippi Emp. Sec. Comm'n v. McGlothin, 556 So. 2d 324 (Miss. 1990), cert. denied, 498 U.S. 879, 111 S. Ct. 211, 112 L. Ed. 2d 171 (1990).

A state may not deny unemployment benefits on the ground that the individual has refused to abandon sincerely held religious beliefs. Mississippi Emp. Sec. Comm'n v. McGlothin, 556 So. 2d 324 (Miss. 1990), cert. denied, 498 U.S. 879, 111 S. Ct. 211, 112 L. Ed. 2d 171 (1990).

State's denial of unemployment compensation benefits to individual who refused a temporary position requiring work on Sunday due to his religious belief that Sunday was "the Lord's Day" violates free exercise clause of Federal Constitution's First Amendment, even though individual belongs to no established religious sect or church. Frazee v. Illinois Dep't of Emp. Sec., 489 U.S. 829, 109 S. Ct. 1514, 103 L. Ed. 2d 914 (1989).

4. Misconduct.

A claimant was properly terminated for misconduct and, therefore, was not entitled to benefits where there was testimony by a representative of the employer that the claimant's work in three different positions was so slow and nonproductive that it appeared that he was acting purposely or against the best interest of the employer. Mississippi Emp. Sec. Comm'n v. Universal Wearparts, Inc., 766 So. 2d 104 (Miss. Ct. App. 2000).

5. Holiday and vacation periods.

Denial of unemployment benefits to the employees was appropriate because they agreed to the shutdown and were paid for the company holidays as specified, but were on unpaid vacation, pursuant to Miss. Code Ann. § 71-5-511(k), for the remaining days of the shutdown, which was not a lack-of-work shutdown. Alexander v. Miss. Dep't of Empl. Sec., 998 So. 2d 419 (Miss. 2008).

Where the claimant, who was a part-time non-seniority employee, was laid off prior to a vacation shutdown period pursuant to a collective bargaining agreement provision which stated that any active employee without seniority would be considered on layoff during a shutdown, he was entitled to benefits as he was not "on vacation" within the meaning of subsection (k). Mississippi Empl. Sec. Comm'n v. Funches, 782 So. 2d 760 (Miss. Ct. App. 2001).

A part-time employee with no seniority was not entitled to unemployment compensation benefits for a two week period when the employer's plant was shut down for a union negotiated vacation/holiday period. Mississippi Empl. Sec. Comm'n v. Funches, — So. 2d —, 2000 Miss. App. LEXIS 264 (Miss. Ct. App. June 6, 2000), opinion withdrawn by, substituted opinion at 782 So. 2d 760, 2001 Miss. App. LEXIS 98, Unemployment Ins. Rep. (CCH) P8285 (Miss. Ct. App. 2001).

6. Medical leave.

Employee on medical leave from his employment due to a job-related knee injury was not entitled to unemployment benefits. His job was waiting for him and he only needed to present medical certification to return to work. Henry v. Miss. Empl. Sec. Comm'n, 905 So. 2d 738 (Miss. Ct. App. 2004).

7. "Termination."

Miss. Code Ann. § 71-5-511(h)(i) (2000) demonstrated that a substitute teacher was not entitled to receive any unemployment benefits because, inter alia, he remained on the substitute teacher list for the school and therefore had a "reasonable assurance" that he would be called on again to perform work as a substitute teacher and he had not been "terminated" as a substitute teacher and, therefore, could have been given the opportunity to work in different positions at the school, as needed. Thomas v. Miss. Empl. Sec. Comm'n, 910 So. 2d 1220 (Miss. Ct. App. 2005).

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ALR. Outside pieceworkers as within social security or unemployment compensation act. 1 A.L.R.2d 555.

Taxicab driver as employee of owner of cab, or independent contractor, within social security and unemployment insurance statutes. 10 A.L.R.2d 369.

Salesmen on commission as within unemployment compensation or social security acts. 29 A.L.R.2d 751.

Unemployment compensation of claimant who refuses nonunion employment. 56 A.L.R.2d 1015.

Severance payments as affecting right to unemployment compensation. 93 A.L.R.2d 1319.

Unemployment compensation: Eligibility as affected by claimant's refusal to work at particular times or on particular shifts. 35 A.L.R.3d 1129.

Unemployment compensation: eligibility of employee laid off according to employer's mandatory retirement plan. 50 A.L.R.3d 880.

Eligibility of strikers to obtain public assistance. 57 A.L.R.3d 1303.

Discharge for absenteeism or tardiness as affecting right to unemployment compensation. 58 A.L.R.3d 674.

Construction of phrase "stoppage of work" in statutory provision denying unemployment compensation benefits during stoppage resulting from labor dispute. 61 A.L.R.3d 693.

Unemployment compensation: eligibility of participants in sympathy strike or slowdown. 61 A.L.R.3d 746.

Unemployment compensation: labor dispute disqualification as applicable to striking employee who is laid off subsequent employment during strike period. 61 A.L.R.3d 766.

Unemployment compensation: harassment or other mistreatment by employer or supervisor as "good cause" justifying abandonment of employment. 76 A.L.R.3d 1089.

Criminal liability for wrongfully obtaining unemployment benefits. 80 A.L.R.3d 1280.

Alien's right to unemployment compensation benefits. 87 A.L.R.3d 694.

Unemployment Compensation: eligibility as affected by claimant's refusal to comply with requirements as to dress, grooming, or hygiene. 88 A.L.R.3d 150.

Unemployment compensation Eligibility as affected by claimant's insistence upon conditions not common or customary to particular employment. 88 A.L.R.3d 1353.

Use of vulgar or profane language as bar to claim for unemployment compensation. 92 A.L.R.3d 106.

Unemployment compensation: eligibility as affected by mental, nervous, or psychological disorder. 1 A.L.R.4th 802.

Right to unemployment compensation as affected by claimant's receipt of holiday pay. 3 A.L.R.4th 557.

Leaving or refusing employment for religious reasons as barring unemployment compensation. 12 A.L.R.4th 611.

Unemployment compensation as affected by vacation or payment in lieu thereof. 14 A.L.R.4th 1175.

Unemployment compensation: burden of proof as to voluntariness of separation. 73 A.L.R.4th 1093.

Employee's use of drugs or narcotics, or related problems, as affecting eligibility for unemployment compensation. 78 A.L.R.4th 180.

Eligibility for unemployment compensation of employee who left employment based on belief that involuntary discharge was imminent. 79 A.L.R.4th 528.

Unemployment compensation: eligibility where claimant leaves employment under circumstances interpreted as a firing by the claimant but as a voluntary quit by the employer. 80 A.L.R.4th 7.

Unemployment compensation: eligibility as affected by claimant's refusal to work at particular times or on particular shifts for domestic or family reason. 2 A.L.R.5th 475.

Eligibility for unemployment compensation as affected by claimant's voluntary separation or refusal to work alleging that the work is illegal or immoral. 41 A.L.R.5th 123.

Unemployment compensation: Leaving employment in pursuit of education or to attend training as affecting right to unemployment compensation. 47 A.L.R.5th 775.

Leaving employment or unavailability for particular job or duties because of sickness or disability, as affecting right to unemployment compensation. 68 A.L.R.5th 13.

Eligibility for unemployment compensation of employee who retires voluntarily. 75 A.L.R.5th 339.

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation §§ 29 et seq., 59 et seq.

24 Am. Jur. Pl & Pr Forms (Rev), Unemployment Compensation, Forms 1 et seq.; 11 et seq.; 31 et seq.; 51 et seq.

7 Am. Jur. Proof of Facts 2d 87, Forced Resignation.

9 Am. Jur. Proof of Facts 2d 697, Unemployment Compensation: Employer's Harassment or Other Mistreatment Justifying Employee's Abandonment of Employment.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 380 et seq.

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§ 71-5-513. Disqualifications [Repealed effective July 1, 2014].

A. An individual shall be disqualified for benefits:

(1)(a) For the week, or fraction thereof, which immediately follows the day on which he left work voluntarily without good cause, if so found by the department, and for each week thereafter until he has earned remuneration for personal services performed for an employer, as in this chapter defined, equal to not less than eight (8) times his weekly benefit amount, as determined in each case; however, marital, filial and domestic circumstances and obligations shall not be deemed good cause within the meaning of this subsection. Pregnancy shall not be deemed to be a marital, filial or domestic circumstance for the purpose of this subsection.

(b) For the week, or fraction thereof, which immediately follows the day on which he was discharged for misconduct connected with his work, if so found by the department, and for each week thereafter until he has earned remuneration for personal services performed for an employer, as in this chapter defined, equal to not less than eight (8) times his weekly benefit amount, as determined in each case.

(c) The burden of proof of good cause for leaving work shall be on the claimant, and the burden of proof of misconduct shall be on the employer.

(2) For the week, or fraction thereof, with respect to which he willfully makes a false statement, a false representation of fact, or willfully fails to disclose a material fact for the purpose of obtaining or increasing benefits under the provisions of this law, if so found by the department, and such individual's maximum benefit allowance shall be reduced by the amount of benefits so paid to him during any such week of disqualification; and additional disqualification shall be imposed for a period not exceeding

fifty-two (52) weeks, the length of such period of disqualification and the time when such period begins to be determined by the department, in its discretion, according to the circumstances in each case.

(3) If the department finds that he has failed, without good cause, either to apply for available suitable work when so directed by the employment office or the department, to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the department, such disqualification shall continue for the week in which such failure occurred and for not more than the twelve (12) weeks which immediately follow such week, as determined by the department according to the circumstances in each case.

(a) In determining whether or not any work is suitable for an individual, the department shall consider among other factors the degree of risk involved to his health, safety and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence; however, offered employment paying the minimum wage or higher, if such minimum or higher wage is that prevailing for his customary occupation or similar work in the locality, shall be deemed to be suitable employment after benefits have been paid to the individual for a period of eight (8) weeks.

(b) Notwithstanding any other provisions of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(i) If the position offered is vacant due directly to a strike, lockout or other labor dispute;

(ii) If the wages, hours or other conditions of the work offered are substantially unfavorable or unreasonable to the individual's work. The department shall have the sole discretion to determine whether or not there has been an unfavorable or unreasonable condition placed on the individual's work. Moreover, the department may consider, but shall not be limited to a consideration of, whether or not the unfavorable condition was applied by the employer to all workers in the same or similar class or merely to this individual;

(iii) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(iv) If unsatisfactory or hazardous working conditions exist that could result in a danger to the physical or mental well-being of the worker. In any such determination the department shall consider, but shall not be limited to a consideration of, the following: the safety measures used or the lack thereof and the condition of equipment or lack of proper equipment. No work shall be considered hazardous if the working conditions surrounding a worker's employment are the same or substantially the same as the working conditions generally prevailing among workers performing the same or similar work for other employers engaged in the same or similar type of activity.

(4) For any week with respect to which the department finds that his total unemployment is due to a stoppage of work which exists because of a labor dispute at a factory, establishment or other premises at which he is or was last employed; however, this subsection shall not apply if it is shown to the satisfaction of the department:

(a) He is unemployed due to a stoppage of work occasioned by an unjustified lockout, if such lockout was not occasioned or brought about by such individual acting alone or with other workers in concert; or

(b) He is not participating in or directly interested in the labor dispute which caused the stoppage of work; and

(c) He does not belong to a grade or class of workers of which, immediately before the commencement of stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or directly interested in the dispute.

If in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment or other premises.

(5) For any week with respect to which he has received or is seeking unemployment compensation under an unemployment compensation law of another state or of the United States. However, if the appropriate agency of such other state or of the United States finally determines that he is not entitled to such unemployment compensation benefits, this disqualification shall not apply. Nothing in this subsection contained shall be construed to include within its terms any law of the United States providing unemployment compensation or allowances for honorably discharged members of the Armed Forces.

(6) For any week with respect to which he is receiving or has received remuneration in the form of payments under any governmental or private retirement or pension plan, system or policy which a base-period employer is maintaining or contributing to or has maintained or contributed to on behalf of the individual; however, if the amount payable with respect to any week is less than the benefits which would otherwise be due under Section 71-5-501, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration. However, on or after the first Sunday immediately following July 1, 2001, no social security payments, to which the employee has made contributions, shall be deducted from unemployment benefits paid for any period of unemployment beginning on or after the first Sunday following July 1, 2001. This one hundred percent (100%) exclusion shall not apply to any other governmental or private retirement or pension plan, system or policy. If benefits payable under this section, after being reduced by the amount of such remuneration, are not a multiple of One Dollar ($1.00), they shall be adjusted to the next lower multiple of One Dollar ($1.00).

(7) For any week with respect to which he is receiving or has received remuneration in the form of a back pay award, or other compensation allocable to any week, whether by settlement or otherwise. Any benefits previously paid for weeks of unemployment with respect to which back pay awards, or other such compensation, are made shall constitute an overpayment and such amounts shall be deducted from the award by the employer prior to payment to the employee, and shall be transmitted promptly to the department by the employer for application against the overpayment and credit to the claimant's maximum benefit amount and prompt deposit into the fund; however, the removal of any charges made against the employer as a result of such previously paid benefits shall be applied to the calendar year and the calendar quarter in which the overpayment is transmitted to the department, and no attempt shall be made to relate such a credit to the period to which the award applies. Any amount of overpayment so deducted by the employer and not transmitted to the department shall be subject to the same procedures for collection as is provided for contributions by Sections 71-5-363 through 71-5-381. Any amount of overpayment not deducted by the employer shall be established as an overpayment against the claimant and collected as provided above. It is the purpose of this paragraph to assure equity in the situations to which it applies, and it shall be construed accordingly.

B. Notwithstanding any other provision in this chapter, no otherwise eligible individual shall be denied benefits for any week because he is in training with the approval of the department; nor shall such individual be denied benefits with respect to any week in which he is in training with the approval of the department by reason of the application of provisions in Section 71-5-511, subsection (c), relating to availability for work, or the provisions of subsection A(3) of this section, relating to failure to apply for, or a refusal to accept, suitable work.

C. Notwithstanding any other provisions of this chapter, no otherwise eligible individual shall be denied benefits for any week because he or she is in training approved under Section 236(a)(1) of the Trade Act of 1974, nor shall such individual be denied benefits by reason of leaving work to enter such training, provided the work left is not suitable employment, or because of the application to any such week in training of provisions in this law (or any applicable federal unemployment compensation law), relating to availability for work, active search for work or refusal to accept work.

For purposes of this section, the term "suitable employment" means with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment (as defined for purposes of the Trade Act of 1974), and wages for such work at not less than eighty percent (80%) of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974.

SOURCES: Codes, 1942, § 7379; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 1; Laws, 1954, ch. 353, § 2; Laws, 1958, ch. 533, § 3; Laws, 1962, ch. 564, § 1; Laws, 1971, ch. 519, § 5; Laws, 1977, ch. 497, § 8; Laws, 1982, ch. 480, § 3;

Laws, 1983, ch. 364, § 4; Laws, 1984, ch. 498, § 3; Laws, 1986, ch. 316, § 2; Laws, 1988, ch. 365; Laws, 1994, ch. 303, § 4; Laws, 1996, ch. 464, § 3; Laws, 2001, ch. 405, § 1; Laws, 2004, ch. 572, § 39; Laws, 2007, ch. 606, § 14; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 39; reenacted without change, Laws, 2010, ch. 559, § 39; reenacted without change, Laws, 2011, ch. 471, § 40, eff from and after July 1, 2011.

Editor's Note — Laws of 1977, ch. 497, § 10, provides:

"SECTION 10. In the event the provisions of P.L. 94-566, the Unemployment Compensation Amendments of 1976, which mandate unemployment insurance coverage for state and local government employees, are declared unconstitutional, the amendments, which mandate unemployment insurance coverage for state and local government employees, adopted to Sections 71-5-11, 71-5-351, 71-5-355, 71-5-357, 71-5-359, 71-5-361, 71-5-511, 71-5-513 and 71-5-541, Mississippi Code of 1972, at the 1977 Regular Session of the Legislature shall stand repealed."

Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, and as amended by Laws of 2011, ch. 471, § 59, provides:

"SECTION 60. This act shall stand repealed on July 1, 2014."

Amendment Notes — The 2010 amendment reenacted the section without change.

The 2011 amendment reenacted the section without change.

Cross References — Benefits paid during any week individual is in training under provisions of this section not to be charged to employer's experience-rating record, see § 71-5-355.

Exclusion of jury duty pay and "inactive duty training" compensation and "unit training Assembly" compensation payable to member of any reserve component from computation of weekly unemployment benefits, see § 71-5-505.

Conditions of eligibility for benefits, see § 71-5-511.

Procedures relative to initial determinations made on the basis of subsection A(4) of this section, see § 71-5-517.

Application of subsections A(1) and A(4) of this section to the disqualification of an individual to receive extended benefits, see § 71-5-541.

Federal Aspects — Trade Act of 1974, see 19 USCS §§ 2101 et seq.

Section 236(a)(1) of the Trade Act of 1974 is classified at 19 USCS § 2296(a)(1).

JUDICIAL DECISIONS

1. In general.
2. Burden of proof.
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1. In general.

Employee himself corroborated a manager's statement that the employee had connected a personal "Zip drive" to the company's computer system in violation of the employer's policy. Thus, the manager corroborated not only the existence of the policy prohibiting such conduct but also the employee's knowledge thereof; the employee's argument that uncorroborated hearsay was admitted in the form of a memorandum on the latter issue was rejected. Howell v. Miss. Empl. Sec. Comm'n, 906 So. 2d 766 (Miss. Ct. App. 2004).

Decision of the Appeals Referee was appropriate under the facts and circumstances before him at the time of the hearing; the appropriate time to address the issue of notice of the telephone hearing was in a timely appeal of the referee's decision. Miss. Empl. Sec. Comm'n v. Marion County Sheriff's Dep't, 865 So. 2d 1153 (Miss. 2004).

Alleged sexual harassment of claimant in workplace provided her with good cause for voluntarily leaving her employment, and therefore claimant was eligible to receive unemployment compensation benefits, though employer contended that claimant had created and participated in the harassment, and claimant had not reported harassment to any management higher than her immediate supervisor. Hoerner Boxes, Inc. v. Mississippi Emp. Sec. Comm'n, 693 So. 2d 1343 (Miss. 1997).

If employee is sexually harassed to such degree that ordinary prudent employee would leave ranks of employed for unemployed, then employee should not be denied unemployment compensation benefits. Hoerner Boxes, Inc. v. Mississippi Emp. Sec. Comm'n, 693 So. 2d 1343 (Miss. 1997).

Sexual harassment in workplace constitutes good cause for voluntarily leaving employment in context of unemployment compensation benefit claims. Hoerner Boxes, Inc. v. Mississippi Emp. Sec. Comm'n, 693 So. 2d 1343 (Miss. 1997).

Unemployment compensation benefits should be offset by the amount of Social Security benefits received when the base-period employer has contributed to the system; thus, an employee's receipt of Social Security benefits in excess of unemployment benefits for which he would otherwise have been eligible disqualified him from receiving those unemployment benefits. Sanders v. Mississippi Emp. Sec. Comm'n, 662 So. 2d 635 (Miss. 1995).

Employees whose jobs were eliminated by technological advances, and who were given the options of terminating employment with a lump sum payment of money, transferring to another job with the same employer in an office either 218 miles, 90 miles, or 81 miles, from the employees' homes, or taking a technological leave of absence, were "unemployed" within the plain meaning of §§ 71-5-11(O) and 71-5-513. Curtis v. Mississippi Emp. Sec. Comm'n, 451 So. 2d 736 (Miss. 1984).

The trial court erred in reversing the decision of the Mississippi Employment Security Commission which allowed unemployment insurance benefits to an employee discharged from her position where the cause of her discharge had been her employer's dissatisfaction with her work performance and some errors she had made in bookkeeping procedure but where there was no evidence to show that the employee had failed to perform the work to the best of her ability or had wilfully failed to follow any instructions given by her employer or that she had been guilty of any wilful or intentional neglect or any misappropriation of funds. Wheeler v. Arriola, 408 So. 2d 1381 (Miss. 1982).

A claimant who voluntarily left her employment as a cook in a restaurant was entitled to benefits where her work hours had been reduced by her employer approximately 50 percent, below the cost of hiring an individual to care for her children while she worked. Tate v. Mississippi Emp. Sec. Comm'n, 407 So. 2d 109 (Miss. 1981).

An order of the board of review of the employment security commission as to facts, if supported by evidence and in the absence of fraud, is conclusive upon the trial court on review. Mississippi Emp. Sec. Comm'n v. Fortenberry, 193 So. 2d 142 (Miss. 1966).

Remuneration "for personal services" referred to in this section [Code 1942, § 7379] is meant to be the equivalent of "wages." Mississippi Emp. Sec. Comm'n v. Medlin, 252 Miss. 146, 171 So. 2d 496 (1965).

2. Burden of proof.

Because a motel clerk met the burden of proof of good cause for leaving work, pursuant to Miss. Code Ann. § 71-5-513(A)(1)(c), based on her refusal to engage in conduct that was illegal as a matter of law, i.e., engage in price-gouging by charging "rack rates" for motel rooms following Hurricane Katrina, the clerk was entitled to unemployment benefits. Sherman v. Miss. Empl. Sec. Comm'n, 989 So. 2d 398 (Miss. 2008).

The requirement by the referee that employee offer rebuttal evidence to rebut employer's allegation of misconduct, when no evidence of misconduct had been offered, was an improper shifting of the burden of proof. Little v. State Emp. Sec. Comm'n, 754 So. 2d 1258 (Miss. Ct. App. 1999).

The referee did not inappropriately shift the burden of proof when he stated that the employer/city would be responsible for establishing that the claimant voluntarily left his employment without good cause, where the examiner's file, which established that the claimant was entitled to benefits, was made part of the record on appeal to the referee; the claimant was in the place of a defendant having already established that he was entitled to the unemployment benefits as the examiner determined and, because the city raised the issue that the examiner's decision was wrong, the burden shifted to the city to come forward with evidence to rebut that evidence previously given to the claims examiner and made a part of the record before the appeals referee. City of Clarksdale v. Smith, 739 So. 2d 482 (Miss. Ct. App. 1999).

An appeals referee erred in ruling that an employee was disqualified from receiving unemployment benefits for voluntarily leaving his job without good cause where the employee's reason for leaving was in dispute, and the ruling was based solely on the employee's failure to prove "good cause," since the burden of proof should have been placed on the employer to show by substantial, clear and convincing evidence that the employee left his job "voluntarily without good cause." Ferrill v. Mississippi Emp. Sec. Comm'n, 642 So. 2d 933 (Miss. 1994).

In unemployment compensation cases, the employer bears the burden of proving by substantial, clear, and convincing evidence that a former employee's conduct warrants disqualification of benefits. Shannon Eng'g & Constr., Inc. v. Mississippi Emp. Sec. Comm'n, 549 So. 2d 446 (Miss. 1989).

The unemployed individual has the burden of showing that conditions of benefits have been met. Mississippi Emp. Sec. Comm'n v. Blasingame, 237 Miss. 744, 116 So. 2d 213 (1959).

3. Religion.

A public school teacher's wearing of a head-wrap as an expression of her religious and cultural heritage as a member of the African Hebrew Israelites in violation of the school's dress code was constitutionally protected religious and cultural expression, such that the Mississippi Employment Security Commission had no authority to deny her claim for unemployment compensation benefits after she was discharged for insubordination when she refused to discontinue wearing the head-wrap, even though there is no specific tenant of the African Hebrew Israelites mandating that women wear headdress, the teacher was not a regular participant in the organized activities of a particular church, synagogue or other religious body, she might have been "selective in wearing the traditional head-wrap" in that at times she did not wear it, and even though her conduct may have been misconduct had it not been constitutionally protected expression. Mississippi Emp. Sec. Comm'n v. McGlothin, 556 So. 2d 324 (Miss. 1990), cert. denied, 498 U.S. 879, 111 S. Ct. 211, 112 L. Ed. 2d 171 (1990).

A state may not deny unemployment benefits on the ground that the individual has refused to abandon sincerely held religious beliefs. Mississippi Emp. Sec. Comm'n v. McGlothin, 556 So. 2d 324 (Miss. 1990), cert. denied, 498 U.S. 879, 111 S. Ct. 211, 112 L. Ed. 2d 171 (1990).

4. Labor disputes, lock-outs, etc.

Section 71-5-513(A)(4), which disqualifies an unemployed worker from receiving unemployment compensation benefits when the unemployment is "due to a stoppage of work which exists because of a labor dispute," only applies to the period that the employee is out because of a stoppage of work due to a labor dispute in which the employee chose to leave the job; it has no application to the period beginning when the employee returns to work in good faith only to find that the employer has replaced him or her solely because of the labor dispute, since the employee is then out of work because of something over which he or she has no control. Mississippi Emp. Sec. Comm'n v. Sanderson Plumbing Prod., Inc., 604 So. 2d 215 (Miss. 1992).

In an action by an employer against the Mississippi Employment Security Commission challenging a ruling that employees were entitled to unemployment benefits as the result of an unjustified lockout by the employer, the circuit court erred in reversing the decision of the Commission where there was substantial evidence to support the finding that the lockout was occasioned solely by the employer and was without justification and that the employees were ready and willing to continue working. Mississippi Emp. Sec. Comm'n v. Georgia-Pacific Corp., 394 So. 2d 299 (Miss. 1981).

Closing of a plant in consequence of absence of employees entitled by union contract to a vacation at that time, does not entitle other employees to unemployment compensation. Mississippi State Emp. Sec. Comm'n v. Jackson, 237 Miss. 897, 116 So. 2d 830 (1960).

5. Leaving employment without good cause.

Benefits claimant was properly denied unemployment compensation because substantial evidence showed that he voluntarily left his job under Miss. Code Ann. § 71-5-513(A)(1)(a) when he turned in his keys following a dispute over pay and a request for time off; moreover, he failed to show good cause for leaving due to this dispute because the job was not detrimental to his health, safety, morals, or physical fitness. Waldrup v. Miss. Empl. Sec. Comm'n, 951 So. 2d 597 (Miss. Ct. App. 2007).

Although the employee claimed that she was unable to cover the assignment due to her current workload as well as family obligations, quitting work due to marital, filial, and domestic circumstances and obligations were not good cause. LaFoe v. Miss. Empl. Sec. Comm'n, 909 So. 2d 115 (Miss. Ct. App. 2005).

In an action for benefits under the Mississippi Employment Security Law in which an employee claimed that she suffered tremendous emotional trauma while working for the Mississippi Department of Corrections, the employee did not meet her burden of establishing good cause to leave her job, as the employee failed to testify before a referee at a telephonic review hearing or present any evidence at that time. Washington v. Miss. Empl. Sec. Comm'n, 921 So. 2d 390 (Miss. Ct. App. 2005), writ of certiorari denied by 926 So. 2d 922, 2006 Miss. LEXIS 168 (Miss. 2006), writ of certiorari denied by 549 U.S. 837, 127 S. Ct. 352, 166 L. Ed. 2d 64, 2006 U.S. LEXIS 6470, 75 U.S.L.W. 3166 (2006).

Teacher's assistant was disqualified from receiving unemployment benefits because she left work voluntarily without good cause. While she hoped to find a job that paid more money, she could have continued working for the school district. Mahaffey v. Miss. Empl. Sec. Comm'n, 912 So. 2d 496 (Miss. Ct. App. 2005).

Trial court's decision to reverse the finding of the Mississippi Employment Security Commission (MESC) Board of Review that the employee had quit her job voluntarily, as it was not supported by substantial evidence, was proper, as the employer made no reference to the employee quitting her job to move to Alabama in his testimony and only made the statement during an interview with a member of the MESC. Further, the employee denied ever making the statement to the employer. Gilbreath v. Miss. Empl. Sec. Comm'n, 910 So. 2d 682 (Miss. Ct. App. 2005).

While the employee's feeling that she was mistreated by not having been paid time and a half for working on a holiday may have been appropriate (she had failed to work the preceding day so as to have been eligible for said pay), such an isolated incident, without more, was not a justification for her leaving said employment without notice and not returning. Moreover, on appeal, she claimed she left work for health-related reasons, and that claim was not substantiated; thus, the agency's decision, that she left her job voluntarily without good cause and was not entitled to benefits, was supported by substantial evidence. Daniels v. Miss. Empl. Sec. Comm'n, 904 So. 2d 1195 (Miss. Ct. App. 2004).

Substantial evidence supported the finding that the employee's physician did not advise the employee to leave his job because of the employee's health concerns; the finding that the employee failed to prove good cause was also supported by his negligible effort to resolve the problem with the employer prior to uitting. Hudson v. Miss. Empl. Sec. Comm'n, 869 So. 2d 1065 (Miss. Ct. App. 2004).

The claimant was not entitled to unemployment compensation benefits where there was no direct evidence presented to prove that the claimant was fired from his job other than the claimant's own testimony and the employer provided multiple witnesses to corroborate that the claimant was not fired from his position, but rather quit his job by not returning to work. NCI Bldg. Components v. Berry, 811 So. 2d 321 (Miss. Ct. App. 2001).

Substantial evidence supported the determination that the claimant voluntarily left his employment without good cause where (1) on his last day of employment, he was told by his supervisor that work was ready and available and that he would consider that the claimant had quit if he walked off the job, and (2) the claimant replied, "well whatever you want" and left. Hodge v. Mississippi Emp. Sec. Comm'n, 757 So. 2d 268 (Miss. 2000).

The board's finding of fact that the claimant voluntarily quit her employment without good cause was not supported by substantial evidence where the claimant testified (1) that she informed her supervisor that she would have to find another job if her working conditions did not improve but assured her supervisor that she would stay as long as she possibly could, (2) that the supervisor then stated that the employer would have to find someone else and that she assured the supervisor that she would give two weeks notice if she did leave, (3) that she asked the supervisor if she was trying to get rid of her and that the supervisor giggled and stated, "I'm hiring somebody else," and (4) that she believed she had been terminated and did not again report to work. Huckabee v. Mississippi Emp. Sec. Comm'n, 735 So. 2d 390 (Miss. 1999).

Substantial evidence supported the determination that the claimant voluntarily quit her employment without good cause and that she was not constructively discharged where (1) the claimant was told by her manager that she was hiring someone else for her position only after she informed her manager that she was looking for other employment, (2) on the next day, the claimant did not show up for work as scheduled and, instead, called and asked for her paycheck before it was due, and (3) she was informed that she would have to turn in her uniforms before receiving her paycheck. Huckabee v. Mississippi Emp. Sec. Comm'n, 722 So. 2d 590 (Miss. 1998), subst. op., 735 So. 2d 390 (Miss. 1999).

Employee who quit her job with county circuit clerk's office upon receiving demotion for violating office personnel policy voluntarily quit her job without good cause, such that she was not entitled to unemployment benefits; it was office policy that staff members could not campaign or solicit votes for candidates during work hours and employee received envelope containing campaign literature from circuit clerk candidate during work hours and showed other employees the campaign literature and thus, she was properly disciplined for direct violation of office policy. Mississippi Emp. Sec. Comm'n v. Lee, 674 So. 2d 512 (Miss. 1996).

The voluntary retirement of an employee who remained available for suitable work disqualified her for unemployment benefits, even though the retirement was induced by the fact that the retirement benefits far exceeded her earnings from the 2 hours per week that she was permitted to work, where the employee had worked 2 to 4 hours per week for several years, and though she was told that her hours might be cut back, she was never told that they were going to be cut; since there was no change in the employee's employment status, there was no evidence that any good cause factor played a role in her decision to relinquish her employment. Mississippi Emp. Sec. Comm'n v. Gaines, 580 So. 2d 1230 (Miss. 1991).

Where an employee's hours have been drastically reduced to a point that there is no continued employment in any real sense, the employee may be eligible for benefits, and the fact that such an employee chooses retirement rather than resignation as a matter of effectuating a termination of employment may be considered but is not controlling on the issue of whether that termination was with or without good cause. The question is in all instances whether there was a "good cause" factor but for which there would have been no relinquishment of employment. Although the availability of retirement benefits in excess of salary is not such a "good cause" factor, that availability does not negate the possibility that some other good cause factor existed. To the extent that there is prima facie evidence of some other good cause factor, the burden is upon the employer to negate it as a "but for" cause of quitting. Mississippi Emp. Sec. Comm'n v. Gaines, 580 So. 2d 1230 (Miss. 1991).

Decision of referee that claimant had not shown good cause for leaving her job was upheld where testimony showed that claimant's shift was being changed from evening to day and employer denied allegations that claimant was being placed on part-time basis and was losing her vacation time and paid holidays. Melody Manor, Inc. v. McLeod, 511 So. 2d 1383 (Miss. 1987).

Statute (§ 71-5-513) which prohibits payment of unemployment benefits to wife who leaves employment in state to accompany husband to another state does not violate equal protection or due process. Warren v. Board of Review of Miss. Emp. Sec. Comm'n, 463 So. 2d 1076 (Miss. 1985).

An employee was not entitled to unemployment compensation benefits where he admitted that he had quit because in his opinion the volume of his employer's work had not been sufficient for his satisfaction. Mississippi Emp. Sec. Comm'n v. Benson, 401 So. 2d 1303 (Miss. 1981).

A woman who, pursuant to an agreement with her employer, left work temporarily to have a baby, and who was laid off during that period due to a lack of work, did not leave work voluntarily without good cause within the meaning of § 71-5-513. Smith v. Mississippi Emp. Sec. Comm'n, 344 So. 2d 137 (Miss. 1977).

Where evidence amply supported the finding of the commission, that an employee who quit her job in a moment of pique during a brief misunderstanding with her employer had quit suitable employment voluntarily and was not entitled to benefits, the court was without statutory authority to enter a contrary judgment. Mississippi Emp. Sec. Comm'n v. Rakestraw, 254 Miss. 56, 179 So. 2d 830 (1965).

A claimant who quits her employment because she can no longer arrange transportation to work has left her work voluntarily and without good cause. Mississippi Emp. Sec. Comm'n v. Ballard, 252 Miss. 418, 174 So. 2d 367 (1965).

Where an individual is possessed of a suitable job and gives it up to become self-employed, he, and not the unemployment fund, assumes the risk, for it was never intended that the statute would underwrite such a venture. Mississippi Emp. Sec. Comm'n v. Medlin, 252 Miss. 146, 171 So. 2d 496 (1965).

To hold that leaving employment to enter self-employment is "good cause" within the meaning of this section [Code 1942, § 7379] would establish the unemployment compensation fund as an insurance fund for employees who decide to leave employment to enter business for themselves, and a claimant who enters business for himself and later fails cannot fall back on compensation benefits. Mississippi Emp. Sec. Comm'n v. Medlin, 252 Miss. 146, 171 So. 2d 496 (1965).

A married woman who leaves her employment because of pregnancy is considered to have done so without good cause within the meaning of the statute. Mississippi Emp. Sec. Comm'n v. Corley, 246 Miss. 43, 148 So. 2d 715 (1963).

Pregnancy of a married woman is a condition arising out of "marital, filial and domestic circumstances and obligations" within the provision that one leaving work by reason of such conditions is not entitled to unemployment compensation benefits. Luke v. Mississippi Emp. Sec. Comm'n, 239 Miss. 292, 123 So. 2d 231 (1960), motion granted, 239 Miss. 298, 123 So. 2d 696 (1960).

6. Availability for work.

An employee was offered "suitable" employment, such that his refusal to work amounted to a voluntary termination of work and rendered him ineligible for unemployment compensation benefits, where he was originally hired to collect some old accounts, he was offered a position as a sales person when most of the collection problems had been resolved, and he declined the work due to the slightly increased hours of the new position. Sunbelt Ford-Mercury, Inc. v. Mississippi Emp. Sec. Comm'n, 552 So. 2d 117 (Miss. 1989).

Long-distance telephone operators who declined offers to transfer to neighboring towns when their office was closed were improperly granted unemployment insurance where the distance to be traveled did not render the available work unsuitable and where few such jobs were available in the city in which they had been working; thus, the operators had unreasonably restricted the terms and conditions under which they would accept employment and were not "available for work." South Cent. Bell Tel. Co. v. Mississippi Emp. Sec. Comm'n, 357 So. 2d 312 (Miss. 1978).

A refusal by a labor union member to accept an offer of employment at the prevailing wage is not for good cause, so as to entitle him to unemployment compensation, because by accepting employment at less than the rate he would lose union status, where resignation from the union was not a condition of employment. Mississippi Emp. Sec. Comm'n v. Mixon, 248 Miss. 399, 159 So. 2d 181 (1964).

A finding that the employment offered to an unemployment compensation claimant was at not less than the prevailing wage is supported by evidence that the wage at the place of employment was that paid when the job was started, although less than the scale to which claimant's labor union had subsequently increased its rate. Mississippi Emp. Sec. Comm'n v. Mixon, 248 Miss. 399, 159 So. 2d 181 (1964).

The test of availability for work is subjective in nature and must depend in part on the circumstances of each case; A factor to be considered is whether claimant wants to go to work or is content to remain idle. Mississippi Emp. Sec. Comm'n v. Blasingame, 237 Miss. 744, 116 So. 2d 213 (1959).

"Available for work" implies that in order to be entitled to unemployment benefits one must be willing to accept any suitable work which may be offered without attaching conditions not usual or customary in that occupation but which fit his particular circumstances. Mississippi Emp. Sec. Comm'n v. Blasingame, 237 Miss. 744, 116 So. 2d 213 (1959).

One limiting availability for work to certain hours is not entitled to unemployment benefits, though limitation is due to lack of transportation at other hours. Mississippi Emp. Sec. Comm'n v. Blasingame, 237 Miss. 744, 116 So. 2d 213 (1959).

7. Misconduct discharge, generally.

Employee sought unemployment benefits after she was terminated from her employment with a city. A circuit court did not err in determining employee was entitled to benefits because the city failed to meet its burden of establishing substantial, clear, and convincing proof that the employee was discharged for misconduct. Miss. Empl. Sec. Comm'n v. Johnson, 9 So. 3d 1170 (Miss. Ct. App. 2009).

Terminated employee was insubordinate in taking unauthorized pictures at work and refusing to listen to his supervisors as to the proper use of the heavy equipment that the employee operated. The employee's insubordination constituted misconduct. Pannell v. Tombigbee River Valley Water Mgmt. Dist., 909 So. 2d 1115 (Miss. 2005).

Clear and convicing evidence, in the testimony of hte employee's supervisors and coworkers, existed to show that a terminated employee's conduct in operating heavy equipment in an unsafe manner warranted disqualification of unemployment benefits under Miss. Code Ann. § 71-5-513(A)(1)(b). Pannell v. Tombigbee River Valley Water Mgmt. Dist., 909 So. 2d 1115 (Miss. 2005).

There was substantial evidence to indicate that the employee violated the employer's policy prohibiting possession of a Zip drive on company premises. Further, substantial evidence was presented that the employee had knowledge that such action constituted a violation of company policy; therefore, the Mississippi Employment Security Commission Board of Review's decision to deny unemployment benefits was not arbitrary or capricious, as the employee's actions constituted misconduct connected with his work. Howell v. Miss. Empl. Sec. Comm'n, 906 So. 2d 766 (Miss. Ct. App. 2004).

Employee's conduct in getting into a physical altercation with another employee constituted disqualifying misconduct as to unemployment benefits; the employee's conduct violated the employer's standard of behavior and rose to the level of misconduct. Welch v. Miss. Empl. Sec. Comm'n, 904 So. 2d 1200 (Miss. Ct. App. 2004).

Meaning of the term "misconduct," as used in the unemployment compensation statute, is conduct evincing such willful and wanton disregard of the employer's interest as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect from his employee. Scott v. Miss. Empl. Sec. Comm'n, 892 So. 2d 291 (Miss. Ct. App. 2004).

Carelessness and negligence of such degree, or recurrence as to manifest culpability, wrongful intent or evil design, and showing an intentional or substantial disregard of the employer's interest or of the employee's duties and obligations to his employer, comes within the meaning of the term misconduct. Scott v. Miss. Empl. Sec. Comm'n, 892 So. 2d 291 (Miss. Ct. App. 2004).

Mississippi Employment Security Commission Administrative Manual, pt. V, para. 1720, states that an employee shall not be found guilty of misconduct for violation of a rule unless: (1) the employee knew or should have known of the rule, (2) the rule was lawful and reasonably related to the job environment and job performance, and (3) the rule is fairly and consistently enforced. Scott v. Miss. Empl. Sec. Comm'n, 892 So. 2d 291 (Miss. Ct. App. 2004).

Insubordination is within the scope of misconduct disqualifying an applicant from receiving unemployment benefits. Scott v. Miss. Empl. Sec. Comm'n, 892 So. 2d 291 (Miss. Ct. App. 2004).

Employee insubordination amounting to misconduct disqualifying an applicant from receiving unemployment benefits is defined as a constant or continuing intentional refusal to obey a direct or implied order, reasonable in nature, and given by and with proper authority. Scott v. Miss. Empl. Sec. Comm'n, 892 So. 2d 291 (Miss. Ct. App. 2004).

Credible evidence supported the Mississippi Employment Security Commission's decision that the claimant was disqualified from receiving unemployment benefits because her actions in refusing to comply with company policy regarding working closing shifts constituted misconduct as defined in Miss. Code Ann. § 71-5-513(A) (1)(b). The circuit court used an improper standard of review because the fact that the Commission's decision conflicted with the decisions of the claims examiner and the appeal's referee did not, in and of itself, make the Commission's decision arbitrary, capricious and not supported by substantial evidence and the applicable law. Miss. Empl. Sec. Comm'n v. Noil, 878 So. 2d 1089 (Miss. Ct. App. 2004).

A person who secretly records a conference with his employer for his protection has not engaged in misconduct which will preclude his receipt of unemployment compensation. Campbell v. Mississippi Emp. Sec. Comm'n, 782 So. 2d 751 (Miss. Ct. App. 2000).

Unemployment compensation claimant's failure to pass physical fitness test required to receive certification as police officer after his first year of employment was "misconduct" disqualifying him from receiving benefits; claimant's actions were clearly in wanton disregard of employer's interest, and claimant had ability to pass physical test within his personal control but evidence showed that he did not attempt to keep his physical fitness up to standards required to pass test. City of Clarksdale v. Mississippi Emp. Sec. Comm'n, 699 So. 2d 578 (Miss. 1997).

"Misconduct" disqualifying claimant from receiving unemployment compensation benefits imports conduct that reasonable and fair-minded external observers would consider wanton disregard of employer's legitimate interests; something more than mere negligence must be shown, although repeated neglect of employer's interests may rise to dignity of misconduct. City of Clarksdale v. Mississippi Emp. Sec. Comm'n, 699 So. 2d 578 (Miss. 1997).

While excessive absenteeism could constitute misconduct, this does not mean that excessive absenteeism would qualify as misconduct in all circumstances. Barnett v. Mississippi Emp. Sec. Comm'n, 583 So. 2d 193 (Miss. 1991).

Insubordination is misconduct within the Mississippi Employment Security Law, "ordinarily adequate that benefits be denied." Mississippi Emp. Sec. Comm'n v. McGlothin, 556 So. 2d 324 (Miss. 1990), cert. denied, 498 U.S. 879, 111 S. Ct. 211, 112 L. Ed. 2d 171 (1990).

A constant or continuing intentional refusal to obey a direct or implied order, reasonable in nature, and given by and with proper authority, constitutes insubordination. Insubordination is included within the scope of "misconduct." Shannon Eng'g & Constr., Inc. v. Mississippi Emp. Sec. Comm'n, 549 So. 2d 446 (Miss. 1989).

A school teacher is "discharged" within the meaning of § 71-5-513, whether he or she has been fired or simply not reemployed, and if a school district can demonstrate that the teacher's non-reemployment was because of misconduct connected with his or her work, the teacher is ineligible for benefits and the school district may not be required to make any reimbursements to the Employment Security Trust Fund. Mississippi Emp. Sec. Comm'n v. Philadelphia Mun. Separate Sch. Dist., 437 So. 2d 388 (Miss. 1983).

8. — Held disqualification.

Employee admitted that she took her break early and that she ignored a direct instruction from her supervisor as to when she was allowed to leave her station. As such, the employee's pattern of negligent conduct constituted misconduct connected with her work which disqualified her for unemployment benefits under Miss. Code Ann. § 71-5-513(A)(1)(b). Brooks v. Northwood Country Club, 19 So. 3d 164 (Miss. Ct. App. 2009).

Where the employee came to work smelling of alcohol, a test administered by a nurse in the employer's first-aid office revealed that the employee's alcohol level was 106.3 milligrams in violation of the company's policy. The employee's actions qualified as "misconduct" for purposes of Miss. Code Ann. § 71-5-513(A)(1)(b); therefore, he was disqualified from receiving unemployment benefits. Miss. Dep't Empl. Sec. v. Clark, 13 So. 3d 866 (Miss. Ct. App. 2009).

Where an attorney appealed the denial of unemployment benefits, sufficient evidence supported the decision to deny the attorney unemployment benefits because the evidence supported the finding of misconduct based on the attorney's failure to complete tasks adequately. Cummings v. Miss. Dep't of Empl. Sec., 980 So. 2d 340 (Miss. Ct. App. 2008).

Board of Review of the Mississippi Department of Employment Security did not err in denying the employee benefits where she repeatedly acted in disregard of company policy, Miss. Code Ann. § 71-5-513(A)(1)(c), and she was aware of the casino's policy that required her to radio another security officer if she needed to leave her post; under Miss. R. Evid. 801(d)(2), the employee's own statements were not hearsay and supported the denial of her employment benefits. Austin v. Miss. Dep't of Empl. Sec., 976 So. 2d 969 (Miss. Ct. App. 2008).

Regardless of whether the residuum rule was applied or not, there was substantial, credible, corroborated evidence of a claimant's multiple acts of insubordination constituting "misconduct" contained in summaries of personnel records based on personal knowledge which were a proper basis for denying unemployment benefits to the claimant; that testimony revealed that many of the relevant records were based on the personal knowledge of the preparer of the individual complaints against the claimant pursuant to Miss. R. Evid. 803(6) and comment. McClinton v. Miss. Dep't of Empl. Sec., 949 So. 2d 805 (Miss. Ct. App. 2006).

Because (1) the claimant had been trained regarding completion of his time reports; (2) the falsification policy regarding time reports was posted on the Internet for all employees to access through computers made available to them; (3) the claimant had been counseled by management regarding discrepancies for a previous incident; and (4) he had been suspended for three days because of other policy violations, the claimant's repeated insertion of incongruent times on his time and overtime reports constituted falsification of records and was disqualifying misconduct within the meaning of Miss. Code Ann. § 71-5-513(A)(1)(b) and Mississippi case law. Therefore, the claimant was not entitled to receive unemployment benefits from the Mississippi Employment Security Commission. Ramsey v. Miss. Empl. Sec. Comm'n, 919 So. 2d 255 (Miss. Ct. App. 2005).

Finding that the employee had not engaged in misconduct while on the job in an action concerning the denial of unemployment benefits was inappropriate based on the record; even the employee's testimony demonstrated that she did not return to work after November 21, 2003, and did not provide her employer with a promised doctor's excuse. Bedford Care Ctr. v. Kirk, 935 So. 2d 1135 (Miss. Ct. App. 2006).

Pursuant to Miss. Code Ann. § 71-5-513(A)(1)(b), a corrections employee was not entitled to unemployment benefits after she was terminated where she admitted to distributing bootleg copies of DVDs to coworkers while at work; she also admitted knowing that distributing bootleg copies of DVDs was illegal. Miss. Dep't of Corr. v. Scott, 929 So. 2d 975 (Miss. Ct. App. 2006).

Employee admitted she voluntarily left her job in Mississippi to pursue educational opportunities. Thus, pursuant to Miss. Code Ann. § 71-5-513 A(1)(a) she was not entitled to unemployment benefits, and under Miss. Code Ann. § 71-5-19(4), she was obligated to repay the benefits to which she was not entitled. Westbrook v. Miss. Empl. Sec. Comm'n, 910 So. 2d 1135 (Miss. Ct. App. 2005).

Where an employee refused to participate in the fire watch training program, he was terminated for misconduct and rendered ineligible to receive unemployment benefits. Scott v. Miss. Empl. Sec. Comm'n, 892 So. 2d 291 (Miss. Ct. App. 2004).

Employee's application for unemployment benefits was properly denied where the record showed the employee left work on his lunch break without permission, did not inform his supervisor, and did not return for the rest of the day. The employee's assertion of chest pains was not credible in light of other evidence, nor was his assertion that he was unable to inform his supervisor of the situation; the employee disregarded standards of behavior that his employer had the right to expect to have acted on where the employer had an established rule that notice in such circumstances was required. Dillon v. Miss. Empl. Sec. Comm'n, 883 So. 2d 1193 (Miss. Ct. App. 2004).

Miss. Code Ann. § 71-7-13(3) provided that an employee discharged on the basis of a confirmed positive drug and alcohol test would be considered to have been discharged for willful misconduct; the evidence and testimony contained in the record clearly showed that the employee tested positive for marijuana on the random drug test, and nothing in the record supported the employee's claim that he was "set up" or that his urine was switched, such that the record contained sufficient evidence to support the conclusion that the employee's actions constituted disqualifying misconduct. Curtis v. Miss. Empl. Sec. Comm'n, 878 So. 2d 1094 (Miss. Ct. App. 2004).

Employee's absenteeism, combined with the failure to give notice to an employer of an absence despite being warned, provided substantial evidence for a finding of willful misconduct in a hearing to determine eligibility for unemployment benefits; the court rejected the employee's argument regarding compliance with the literal language of the policy because the employee understood the requirement of reporting an absence of at least 30 minutes prior to the beginning of a shift, and, although some of the absences might have been excused under the Family and Medical Leave Act, the employee failed to bring this to the attention of a supervisor. McNeil v. Miss. Empl. Sec. Comm'n, 875 So. 2d 221 (Miss. Ct. App. 2004).

Substantial evidence supported the Mississippi Employment Security Commission's finding of misconduct by the employee so as to deny the employee unemployment benefits; the employee's four consecutive absences were sufficient to establish a willful and wanton disregard of the employer's attendance policy. Miss. Empl. Sec. Comm'n v. Danner, 867 So. 2d 1050 (Miss. Ct. App. 2004).

Where employee at a casino accepted a gratuity from a patron in the form of a "comp ticket," which security guards were not allowed to give under the employer's established policy, this constituted wilful misconduct, and the employee was not entitled to unemployment benefits. Hardy v. Miss. Empl. Sec. Comm'n, 864 So. 2d 1045 (Miss. Ct. App. 2004).

Claimant was properly disqualified from receiving unemployment benefits where the claimant willfully violated USDA guidelines regarding the safe handling of meat and meat products, such that his actions constituted misconduct. McGee v. Miss. Empl. Sec. Comm'n, 876 So. 2d 425 (Miss. Ct. App. 2004).

Substantial evidence in the record supported a determination by the Mississippi Employment Security Commission that the employee's persistent failure to perform easily-accomplished but nevertheless important duties of her job demonstrated carelessness and negligence of such degree, or recurrence thereof, as to manifest culpability showing an intentional disregard of the employer's interest; such a finding required that the employee be disqualified from receiving unemployment compensation benefits. Miss. Empl. Sec. Comm'n v. Claiborne, 872 So. 2d 698 (Miss. Ct. App. 2004).

Pursuant to Miss. Code Ann. §§ 71-5-531 and 71-5-513, the decision of the Mississippi Employment Security Commission denying the claimant unemployment benefits on the basis of misconduct was arbitrary, capricious, and improper because the employer failed to demonstrate by substantial, clear, and convincing evidence that the claimant was terminated for misconduct since (1) the employer did not prove that the claimant received training in the handling of dirty linen; (2) there was no evidence that the claimant had been given a copy of the infection control manual or that he had even seen it before; (3) the employer admitted that the conduct of bringing dirty linen through the clean linen door on one occasion was not grounds for termination. Gordon v. Miss. Empl. Sec. Comm'n, 864 So. 2d 1013 (Miss. Ct. App. 2004).

If an employer wishes to disqualify an employee for failing a federally-regulated drug test, pursuant to 49 U.S.C.S. § 31306, in which a split specimen was taken, it must produce clear and convincing evidence that the split specimen was reconfirmed positive or that the employee declined to discuss the result with a medical review officer pursuant to 49 C.F.R. § 40.33(c); doing so will satisfy the "misconduct" requirement of Miss. Code Ann. § 71-5-513A(1)(b). Southwood Door Co. v. Burton, 847 So. 2d 833 (Miss. 2003).

In order to establish a federal Department of Transportation-regulated employee's ineligibility for state unemployment benefits because of a positive drug or alcohol test result pursuant to 49 U.S.C.S. § 31306, there must be clear and convincing evidence that the testing was conducted according to the federal guidelines; because no evidence was produced that the truck driver was informed of his right to request drug testing of the split specimen within 72 hours, misconduct for purposes of unemployment benefits as required by Miss. Code Ann. § 71-5-513A(1)(b) was not established and the Board of Review of the Mississippi Employment Security Commission's decision denying the truck driver unemployment benefits was improper. Southwood Door Co. v. Burton, 847 So. 2d 833 (Miss. 2003).

Substantial evidence supported the agency's finding that a claimant had been discharged for misconduct in referring to a supervisor in a derogatory manner, using profane language, which disqualified her for unemployment benefits. Norman v. Magnolia Reg'l Health Ctr., 848 So. 2d 213 (Miss. Ct. App. 2003).

Denial by the Board of Review of the Mississippi Employment Security Commission of unemployment benefits for employee misconduct under Miss. Code Ann. § 71-5-513A(1)(b) was supported by substantial evidence and was conclusive under Miss. Code Ann. § 71-5-531 where the employee was discharged for smoking while hazardous waste was on a forklift; the smoking incident rose to the level of misconduct under the unemployment law as the employee had been cited for four safety violations in the previous seven months, two of which had resulted in suspensions. Miss. Empl. Sec. Comm'n v. Barnes, 853 So. 2d 153 (Miss. Ct. App. 2003).

9. —Held not disqualification.

Benefits claimant was eligible for unemployment compensation after her termination from a retail store for one incident of using profanity in the presence of a customer because this did not rise to the level of disqualifying misconduct under Miss. Code Ann. § 71-5-513, even though the conduct might have justified her termination. Acy v. Miss. Empl. Sec. Comm'n, 960 So. 2d 592 (Miss. Ct. App. 2007).

Where the school district failed to renew claimant's contract as a physical education teacher and head basketball coach based on its dissatisfaction with the basketball program and the physical education program, the cited reasons did not amount to the requisite misconduct necessary to preclude claimant from receiving unemployment benefits under Miss. Code Ann. § 71-5-513. Greenwood Pub. Sch. Dist. v. Miss. Dep't of Empl. Sec., 962 So. 2d 684 (Miss. Ct. App. 2007), writ of certiorari denied en banc by 962 So. 2d 38, 2007 Miss. LEXIS 479 (Miss. 2007).

Employee was not disqualified from receiving unemployment under Miss. Code Ann. § 71-5-513 based on her one act of cursing under her breath in the presence of a customer because this isolated incident, although sufficient for termination, was insufficient to show disqualifying misconduct. Acy v. Miss. Empl. Sec. Comm'n, — So. 2d —, 2007 Miss. App. LEXIS 54 (Miss. Ct. App. Feb. 6, 2007), substituted opinion at, opinion withdrawn by 960 So. 2d 592, 2007 Miss. App. LEXIS 469 (Miss. Ct. App. 2007).

Where the claimant was discharged because she was experiencing difficulty working with another employee, her actions did not constitute misconduct under Miss. Code Ann. § 71-5-513A(1)(b). Thus, she was not disqualified from receiving unemployment benefits. Trading Post, Inc. v. Miss. Empl. Sec. Comm'n, 924 So. 2d 634 (Miss. Ct. App. 2006).

Although an employee violated an employer's policy by failing to call and give an update on his medical status on a regular basis while receiving workers' compensation benefits, he was not disqualified from receiving unemployment benefits under Miss. Code Ann. § 71-5-513(A)(1)(b) based on misconduct since the policy was not consistently applied. Miss. Empl. Sec. Comm'n v. Woods, 938 So. 2d 359 (Miss. Ct. App. 2006).

Mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, or inadvertences and ordinary negligence in isolated incidents, and good faith errors in judgment or discretion were not considered misconduct within the meaning of Miss. Code Ann. § 71-5-513 A(1)(b), and because inability or incapacity resulting in failure of good performance was not misconduct, the employer failed to establish misconduct on the part of the unemployment compensation claimant. Time Warner Cable, Inc. v. Miss. Empl. Sec. Comm'n Bd. of Review, 922 So. 2d 820 (Miss. Ct. App. 2006).

In an appeal from a decision of the Mississippi Employment Security Commission (MESC), and the circuit court's affirmance thereon, the facts were: (1) the employee was warned in regard to an excessive number of sick days, early leaves and absences; (2) he received an unsatisfactory performance review because he had not been cooperative with campus security; (3) he was disruptive at a campus physical plant and he left work without permission; (3) he was placed on probation regarding his job performance; and finally, (4) he was arrested for robbery arrest and possession of a firearm by a convicted felon. In its infinite wisdom, the appellate court concluded the employee was terminated, not because of the aforementioned performance issues (unrelated to his incarceration), but because of the events which surrounded his two day incarceration; in that respect, the poor fellow did not want his employer to know about his arrest, so he had his girlfriend call his employer and state that he would be absent for two days, and without the employee's permission, the girlfriend told the employer that same was due his mother's illness; his girlfriend lied, but he did not, the appellate court concluded his employer did not need to know the reason for said two day absence, and the denial of his application for unemployment benefits was reversed. Broome v. Miss. Empl. Sec. Comm'n, 921 So. 2d 360 (Miss. Ct. App. 2005), reversed by 921 So. 2d 334, 2006 Miss. LEXIS 45 (Miss. 2006).

Court erred in upholding an order denying a city employee's claim for unemployment compensation benefits after the employee was terminated because the employee's actions could not be classified as "misconduct" under Miss. Code Ann. § 71-5-513A(1)(b). Record lacked sufficient evidence to support the conclusion that the employee's failure to keep a park clean all day constituted carelessness and negligence of such degree, or recurrence thereof, as to manifest culpability. Armstrong v. Miss. Empl. Sec. Comm'n, 874 So. 2d 989 (Miss. Ct. App. 2004).

Term "misconduct," as used in Miss. Code Ann. § 71-5-513(A), was conduct evincing such willful and wanton disregard of the employer's interest as was found in deliberate violations or disregard of standards of behavior which the employer had the right to expect from his employee; failure in good performance as the result of inability or incapacity, or inadvertence and ordinary negligence in isolated incidents were not considered misconduct; the claimant should have been eligible for benefits. Davis v. Miss. Empl. Sec. Comm'n, 858 So. 2d 909 (Miss. Ct. App. 2003).

In order to establish a federal Department of Transportation-regulated employee's ineligibility for state unemployment benefits because of a positive drug or alcohol test result pursuant to 49 U.S.C.S. § 31306, there must be clear and convincing evidence that the testing was conducted according to the federal guidelines; because no evidence was produced that the truck driver was informed of his right to request drug testing of the split specimen within 72 hours, misconduct for purposes of unemployment benefits as required by Miss. Code Ann. § 71-5-513A(1)(b) was not established and the Board of Review of the Mississippi Employment Security Commission's decision denying the truck driver unemployment benefits was improper. Southwood Door Co. v. Burton, 847 So. 2d 833 (Miss. 2003).

Denial of unemployment compensation to a fired special education teacher was proper where she was fired for misconduct for failing to follow approved procedures and showing a continuing disregard for the policies and procedures of her employer. Yarbrough v. Miss. Empl. Sec. Comm'n, 841 So. 2d 1193 (Miss. Ct. App. 2003).

Administrative decision that a day care center worker who left the center without permission after an argument with her supervisor over the care of a child was properly terminated for misconduct and was, therefore, ineligible to receive unemployment compensation benefits was supported by substantial evidence that the worker was asked not to leave because the center would then be understaffed and was told that if she did leave she would be considered as having quit. Otto v. Miss. Empl. Sec. Comm'n, 839 So. 2d 547 (Miss. Ct. App. 2002).

Denial of unemployment benefits was upheld, as employee was terminated for insubordination when he continued to send co-employees emails after he was warned not to, and the restriction on communication was reasonably related to job performance and the job environment, even though the restriction included contact with employees both at work and away from work for non-work-related matters. Captain v. Miss. Emp. Sec. Comm'n, 817 So. 2d 634 (Miss. Ct. App. 2002).

Where the employee was terminated for refusing to carry out the order of his boss, and, his assertions to the contrary, the employee had no medical restrictions, the employee was terminated for misconduct and was ineligible for unemployment benefits under Miss. Code Ann. § 71-5-513A(1)(b). Reeves v. Miss. Emp. Sec. Comm'n, 806 So. 2d 1178 (Miss. Ct. App. 2002).

An employee's willful refusal to report for work for the purpose of participating in an unauthorized strike when the employee had actual knowledge that participation in the strike violated the provisions of the agreement under which he was employed rises to the level of disqualifying misconduct and may not be dismissed as a mere isolated incident of insubordination. Mississippi Employees' Sec. Comm'n v. Berry, 811 So. 2d 298 (Miss. Ct. App. 2001).

A postal employee was properly discharged for misconduct and, therefore, was not entitled to benefits where (1) after he requested overtime or assistance and was refused, he disobeyed his supervisor's direct command to finish delivering the mail in the time allowed, (2) he even took time away from his duties to call the post office and complain to a clerk that he would not be able to finish delivering the mail on his route, and (3) he returned to the post office with undelivered mail instead of following the department's policy of obeying the order and submitting a grievance later. Johnson v. State Emp. Sec. Comm'n, 767 So. 2d 1088 (Miss. Ct. App. 2000).

A nurse at a retirement home violated several provisions of her employee handbook and, therefore, committed misconduct and was ineligible for benefits where, after being arrested for disturbing the peace, she threatened the mother of an employee at the jail to which she was taken, the mother being an invalid who was a long-term resident at the retirement home. Johnson v. Mississippi Emp. Sec. Comm'n, 761 So. 2d 861 (Miss. 2000).

A claimant was not entitled to unemployment benefits because he was discharged from employment for misconduct connected with his work where he manufactured fake identification cards intended to resemble official state identification cards issued by the Department of Public Safety and photocopies of several of the cards were discovered in the personnel files of other employees at the plant, notwithstanding that the claimant manufactured the identification cards while off-duty and testified that he did not intend the cards to be used to gain employment with his employer; in the community where the claimant lived, it was commonly understood that anyone desiring employment with his employer would be required to submit appropriate identification and that an official state identification card was one of the typical means of accomplishing that requirement. Mississippi Emp. Sec. Comm'n v. Douglas, 758 So. 2d 1059 (Miss. Ct. App. 2000).

There was sufficient evidence that the claimant was guilty of willful misconduct where, after receiving several official employer admonitions, he was dismissed when he removed and ate canned pineapple from the employee salad bar, allegedly because he believed it was free, and, when informed that he would have to pay for it, refused to do so. Kellar v. Mississippi Emp. Sec. Comm'n, 756 So. 2d 840 (Miss. Ct. App. 2000).

The uttering of vulgar obscenities by the claimant directed at her supervisor rose to the level of a disqualifying act of insubordination and misconduct where the utterings were the result of the claimant's displeasure with her supervisor's repeated orders to perform an authorized and reasonable task and the encounter even went so far as to briefly disrupt two of the employer's production lines. Mississippi Emp. Sec. Comm'n v. Hudson, 757 So. 2d 1010 (Miss. Ct. App. 2000).

A silk screener was properly discharged for misconduct due to her failure to properly clean the equipment after repeated reprimands; her poor performance was not due to her inability or incapacity to perform her duties as a silk screener, and her failure to clean the equipment involved in the silk screening process bore no relation to her skills as a silk screener. Shavers v. Mississippi Emp. Sec. Comm'n, 763 So. 2d 183 (Miss. Ct. App. 2000).

A bank teller was not discharged for misconduct and, therefore, was entitled to unemployment compensation benefits where she was fired due to a $ 2,000 shortage in her cash drawer, but the bank believed the shortage to have been caused by an honest mistake and fired her not for dishonesty, but rather for negligent actions consistent with an alleged policy of the bank that tellers would be automatically terminated following any occurrence of a teller's drawer being out of balance by more than $ 1,000. Joseph v. Mississippi Emp. Sec. Comm'n, 771 So. 2d 410 (Miss. Ct. App. 2000).

A jail control officer, who was responsible for monitoring activities of all jail surveillance cameras to detect any unusual activities or equipment malfunction and reporting it to the supervisor, and who failed to report another employee for covering up a monitoring camera did not commit misconduct within the meaning of this section since the monitoring rule was not fairly and consistently enforced and the control officer had not been informed that failure to detect such an incident would result in immediate termination for such first offense. Coahoma County v. Mississippi Emp. Sec. Comm'n, 761 So. 2d 846 (Miss. 2000).

A cashier was not subject to disqualification from receiving benefits due to misconduct involving cash register variances where there was no evidence and certainly no finding that the cashier was herself pocketing the missing funds and one of the three incidents involved an overage in the register. Mississippi Emp. Sec. Comm'n v. Jones, 755 So. 2d 1259 (Miss. Ct. App. 2000).

A maid's conduct in refusing to scrub scuff marks off a floor did not constitute misconduct where she had previously attempted to scrub scuff marks off the floors and had experienced physical complications from her efforts. Routt v. Mississippi Empl. Sec. Comm'n, 753 So. 2d 486 (Miss. Ct. App. 1999).

The claimant did not violate his employer's attendance policy by not calling in or reporting to work for seven consecutive workdays since he had only missed five consecutive work days at the time that he called his supervisor to report that he would not be returning to work until he found someone to stay with his ailing grandmother; he was also able to establish good cause for his five unexplained absences, as required by the terms of the labor agreement. Campbell v. Mississippi Emp. Sec. Comm'n, 755 So. 2d 503 (Miss. Ct. App. 1999).

Where the employer did not clearly convey to the claimant that her request for two days off was denied and did not warn her of the consequences if she missed two days from work, the claimant's discharge was not for willful misconduct connected with the work. Trading Post, Inc. v. Nunnery, 731 So. 2d 1198 (Miss. 1999).

The circuit court did not err in sustaining the denial of unemployment compensation to the claimant on the basis of misconduct for failing to obey directives from his supervisors to avoid spending too much time in the work area of a particular married female employee; the directive was issued because of the expressed concerns of the employer with workplace violence coupled with two incidents involving the spouses of the claimant and the other employee, and the claimant failed to abide by the directives to avoid having contact with the other employee. Hux v. Mississippi Empl. Sec. Comm'n, 749 So. 2d 1225 (Miss. Ct. App. 1999).

An employee's act of failing to turn over her employee identification badge upon her suspension was sufficient to constitute misconduct. Young v. Mississippi Empl. Sec. Comm'n, 754 So. 2d 464 (Miss. 1999).

Evidence supported a determination that the claimant, who was a security officer/maintenance technician, was disqualified from receiving benefits on the basis of his discharge from employment for misconduct connected with his work; claimant violated company policy by remaining on the company premises after his shift ended. Mississippi Emp. Sec. Comm'n v. Sojourner, 744 So. 2d 796 (Miss. Ct. App. 1999).

The claimant's failure to submit to random drug testing within the three hour period prescribed by her employer's established written policy constituted misconduct as a matter of law and, therefore, she was not entitled to unemployment benefits. Halbert v. City of Columbus, 722 So. 2d 522 (Miss. 1998).

The claimant was not disqualified from receiving benefits on the basis of insubordination arising from her refusal to see a doctor in connection with her carpal tunnel syndrome where, according the testimony of both the claimant and her supervisor, there was never a question as to her willingness to see a physician. Mississippi Emp. Sec. Comm'n v. Noel, 712 So. 2d 728 (Miss. Ct. App. 1998).

Substantial evidence supported finding that teacher's behavior of showing "Silence of the Lambs," an R-rated movie, to students, some of whom were under 17, which resulted in teacher's termination, constituted "misconduct," and, therefore, teacher was not entitled to unemployment benefits; teacher admitted that principal had previously told him that in future, films should relate to subject matter, teacher intentionally disregarded statement, then stated at hearing that he believed film related to his subject, anatomy and physiology, yet also stated that he had not previewed movie in order to make such determination. Mississippi Emp. Sec. Comm'n v. Harris, 672 So. 2d 739 (Miss. 1996).

An employee's single violation of her employer's apparent rule regarding employee compensation confidentiality by discussing her raise and bonus did not constitute disqualifying misconduct within the meaning of the unemployment compensation law. Gore v. Mississippi Emp. Sec. Comm'n, 592 So. 2d 1008 (Miss. 1992).

The conduct of the executive director of a city council on aging constituted disqualifying misconduct within the meaning of § 71-5-513(A)(1)(b) where the council had discussed with the executive director her temper, hostile relationship, and lack of rapport with the personnel of funding agencies and had stressed to her the importance of cooperation, but complaints continued to be made by those agencies regarding the executive director's performance. Westbrook v. Greenville Council on Aging, 599 So. 2d 948 (Miss. 1992).

The suspension of an employee's driver's license for failure to maintain personal automobile liability insurance constituted misconduct connected with work so as to disqualify the employee from receiving unemployment compensation benefits where a valid driver's license was required as a condition of his employment; moreover, the employee's contention that he was unaware that his driver's license had been suspended did not preclude disqualification for unemployment benefits. Richardson v. Mississippi Emp. Sec. Comm'n, 593 So. 2d 31 (Miss. 1992).

An employee's actions constituted misconduct, so as to disqualify him from receiving unemployment compensation benefits, where the employee was absent 12 times during a 60-day portion of a 90-day probation period after he had agreed that he would not miss any time during the probation period, he made threats of bodily harm to others, including three supervisors, over a several year period, and he borrowed one of his employer's vehicles without authorization and while he had a suspended license. Booth v. Mississippi Emp. Sec. Comm'n, 588 So. 2d 422 (Miss. 1991).

The actions of a child care center employee constituted misconduct which would disqualify her from receiving unemployment compensation benefits, where the employee struck a 3- or 4-year-old child behind the head with her hand on 2 occasions, this was a violation of the employer's disciplinary policy, and the employee had been previously counselled concerning striking children in the back of the head in this manner. Mississippi Emp. Sec. Comm'n v. Flanagan, 585 So. 2d 783 (Miss. 1991).

An employee's actions amounted to misconduct under § 71-5-513A(1)(b) where he had a record of excessive absenteeism, and he failed to notify his employer about absences after being fully warned and admonished about his absenteeism. Barnett v. Mississippi Emp. Sec. Comm'n, 583 So. 2d 193 (Miss. 1991).

Possessing a gun on company property and threatening fellow employees on company property in direct conflict with company policy both constitute "misconduct" sufficient to disqualify a terminated employee from receiving unemployment benefits. Mississippi Emp. Sec. Comm'n v. Lee, 580 So. 2d 1227 (Miss. 1991).

Absenteeism from work due to alcoholism and treatment for alcoholism constitutes "misconduct" sufficient to disqualify an employee from receiving unemployment compensation benefits. Mississippi Emp. Sec. Comm'n v. Martin, 568 So. 2d 725 (Miss. 1990).

A city firefighter who pled nolo contendere to a charge of sale of cocaine was guilty of misconduct connected with his employment so as to be disqualified from receiving unemployment compensation benefits. A firefighter is in a position requiring a great deal of responsibility, and he must be able to respond to emergency situations. A firefighter cannot violate the trust of citizens, and the city had no other choice but to fire the firefighter when he failed to clear his name. Regardless of the legal aspects of a plea of nolo contendere, it creates an implication of guilt, and the firefighter's reputation was tainted. City of Corinth v. Cox, 565 So. 2d 1142 (Miss. 1990).

An environmental technician who worked in the water treatment section of the power area of a plant was guilty of misconduct so as to be disqualified from receiving unemployment benefits where he was dismissed for sleeping on several occasions while on the job. Ray v. Bivens, 562 So. 2d 119 (Miss. 1990).

A police department employee was guilty of misconduct so as to be disqualified from receiving unemployment benefits where she received over $700 worth of personal collect telephone calls at the police station in violation of a clearly announced and published directive or policy concerning the use of the telephone by employees. City of Picayune v. Mississippi Emp. Sec. Comm'n, 525 So. 2d 1330 (Miss. 1988).

An unemployment compensation claimant was not entitled to benefits since excessive garnishments upon his wages constituted "misconduct" connected with his work under § 71-5-513(A)(2), in accordance with the public policy stated in § 71-5-3, the implementation of which is accomplished through contributions of all covered employers into the state employment fund pursuant to §§ 71-5-111 and 71-5-351. Mississippi Emp. Sec. Comm'n v. Borden, Inc., 451 So. 2d 222 (Miss. 1984).

An employee who was terminated for excessive absenteeism was not disqualified from receiving unemployment compensation benefits due to misconduct, where the employee was a good employee for 13 years, it was only after her work schedule changed that she began to have problems arising from child care and transportation difficulties, and her supervisor thwarted her attempts to alleviate her problems by refusing to change her lunch schedule to enable her to pick up her children from school. Mississippi Emp. Sec. Comm'n v. Bell, 584 So. 2d 1270 (Miss. 1991).

An employer failed to meet his burden of proving disqualifying misconduct, arising from a fight between 2 employees, by substantial, clear and convincing evidence, where the only eyewitness who testified at the hearing was the employee, and the employer offered a report prepared by a security officer, an unsigned summary of witness testimony without any proof of who prepared it, 3 handwritten statements of witnesses, and a list of safety rules which included a prohibition of fighting or provoking a fight, since uncorroborated hearsay testimony is insufficient to rise to the required level of substantial evidence. Mississippi Emp. Sec. Comm'n v. McLane-Southern, Inc., 583 So. 2d 626 (Miss. 1991).

The fact that an employee has been involved in an isolated fight with a fellow employee at the workplace, standing alone, is not "misconduct" within the meaning of § 71-5-513(A)(1)(b) so as to disqualify that person from receiving unemployment benefits should that person be discharged as a result of the fight. Mississippi Emp. Sec. Comm'n v. McLane-Southern, Inc., 583 So. 2d 626 (Miss. 1991).

"Misconduct" imports conduct that reasonable and fair-minded external observers would consider a wanton disregard of the employer's legitimate interests. Something more than mere negligence must be shown, though repeated neglect of an employer's interests may rise to the dignity of misconduct. An employee's refusal to expose himself or herself to unreasonable danger or risk of harm does not constitute misconduct. An employee does not surrender his or her right to regard his or her personal safety when he or she accepts employment. A worker undertaking a hazardous duty has a right to emerge from the employment a whole person, the same as a pencil pusher with an office job. An employer has no countervailing interest that the law ought to respect. An employee has the right to walk off the job without his or her conduct being regarded "misconduct" if a reasonably prudent person under the circumstances would believe that the danger was so grave that there existed a real danger of death or serious physical injury, and if the employee had no reasonable alternative. Where there exists such facts and circumstances, known to or reasonably available to the employer, the employee's refusal of the assignment without more is not "misconduct" under § 71-5-513(A)(1)(b). Thus, an employee of a company specializing in servicing oil well problems was not guilty of misconduct within the meaning of the Mississippi Employment Security Act by refusing an assignment to correct a potential blowout on an oil drilling rig where the job involved substantial danger to life and limb and the employer gave the employee no option but to do what he reasonably considered extremely dangerous, even though the employee may have been negligent in refusing the job before inspecting the site. Mississippi Emp. Sec. Comm'n v. Phillips, 562 So. 2d 115 (Miss. 1990).

In an action by an employee seeking unemployment compensation benefits following her termination as a cashier from a supermarket, the employee was not guilty of misconduct, so as to be disqualified from receiving benefits, where she had refused to take a polygraph test conducted by an independent firm hired by her employer to question a number of its employees regarding suspected misconduct, she had signed an agreement to make restitution for certain items which she had allegedly consumed from the delicatessen in the market without paying for them, and where this consumption of small quantities of food without payment was neither willful nor intentional, notwithstanding that an employee's deliberate embezzlement of funds entrusted to her care in the course of her employment would constitute misconduct. Piggly Wiggly v. Mississippi Emp. Sec. Comm'n, 465 So. 2d 1062 (Miss. 1985).

Cashier who consumes small quantities of food without payment has not committed misconduct which will disqualify her from eligibility for unemployment compensation benefits upon discharge where failure to pay is neither willful nor intentional. Piggly Wiggly v. Mississippi Emp. Sec. Comm'n, 465 So. 2d 1062 (Miss. 1985).

10. Late notice of appeal.

Denial of unemployment benefits to the employee under Miss. Code Ann. § 71-5-513(A)(1)(b) was appropriate because he failed to timely seek review of the denial of his claim for unemployment benefits. The employee failed to show good cause for the late notice of appeal because he did not provide any evidence that his failure to receive notice of the claims examiner's decision was due to an act beyond his control. Cerrato v. Miss. Empl. Sec. Comm'n, 968 So. 2d 957 (Miss. Ct. App. 2007).

RESEARCH REFERENCES

ALR. Leaving employment, or unavailability for particular job or duties because of sickness or disability, as affecting right to unemployment compensation. 14 A.L.R.2d 1308.

Unemployment compensation of claimant who refuses nonunion employment. 56 A.L.R.2d 1015.

Unemployment compensation: Eligibility as affected by claimant's refusal to work at particular times or on particular shifts. 35 A.L.R.3d 1129.

Unemployment compensation: eligibility of employee laid off according to employer's mandatory retirement plan. 50 A.L.R.3d 880.

Termination of employment because of pregnancy as affecting right to unemployment compensation. 51 A.L.R.3d 254.

Right to unemployment compensation as affected by receipt of pension. 56 A.L.R.3d 520.

Right to unemployment compensation as affected by receipt of Social Security benefits. 56 A.L.R.3d 552.

Discharge for absenteeism or tardiness as affecting right to unemployment compensation. 58 A.L.R.3d 674.

Construction of phrase "establishment" or "factory, establishment, or other premises" within unemployment compensation statute rendering employee ineligible during labor dispute or strike at such location. 60 A.L.R.3d 11.

Construction of phrase "stoppage of work" in statutory provision denying unemployment compensation benefits during stoppage resulting from labor dispute. 61 A.L.R.3d 693.

Unemployment compensation: eligibility of participants in sympathy strike or slowdown. 61 A.L.R.3d 746.

Unemployment compensation: labor dispute disqualification as applicable to striking employee who is laid off subsequent employment during strike period. 61 A.L.R.3d 766.

What constitutes participation or direct interest in, or financing of, labor dispute or strike within disqualification provisions of unemployment compensation acts. 62 A.L.R.3d 314.

Refusal of nonstriking employee to cross picket line as justifying denial of unemployment compensation benefits. 62 A.L.R.3d 380.

Unemployment compensation: application of labor dispute disqualification for benefits to locked out employee. 62 A.L.R.3d 437.

General principles pertaining to statutory disqualification for unemployment compensation benefits because of strike or labor dispute. 63 A.L.R.3d 88.

Unemployment compensation: harassment or other mistreatment by employer or supervisor as "good cause" justifying abandonment of employment. 76 A.L.R.3d 1089.

Repayment of unemployment compensation benefits erroneously paid. 90 A.L.R.3d 987.

Use of vulgar or profane language as bar to claim for unemployment compensation. 92 A.L.R.3d 106.

Unemployment compensation: eligibility as affected by claimant's refusal to accept employment at compensation less than that of previous job. 94 A.L.R.3d 63.

Unemployment compensation: eligibility as affected by claimant's refusal to work at reduced compensation. 95 A.L.R.3d 449.

Right to unemployment compensation as affected by claimant's receipt of holiday pay. 3 A.L.R.4th 557.

Leaving or refusing employment for religious reasons as barring unemployment compensation. 12 A.L.R.4th 611.

Leaving or refusing employment because of allergic reaction as affecting right to unemployment compensation. 12 A.L.R.4th 629.

Unemployment compensation as affected by vacation or payment in lieu thereof. 14 A.L.R.4th 1175.

Right to unemployment compensation as affected by employee's refusal to work in areas where smoking is permitted. 14 A.L.R.4th 1234.

Right to unemployment compensation of one who quit job because not given enough work to keep busy. 15 A.L.R.4th 256.

Employee's act or threat of physical violence as bar to unemployment compensation. 20 A.L.R.4th 637.

Eligibility for unemployment compensation as affected by voluntary resignation because of change of location of residence. 21 A.L.R.4th 317.

Right to unemployment compensation as affected by misrepresentation in original employment application. 23 A.L.R.4th 1272.

Conduct or activities of employees during off-duty hours as misconduct barring unemployment compensation benefits. 35 A.L.R.4th 691.

Eligibility for unemployment compensation benefits of employee who attempts to withdraw resignation before leaving employment. 36 A.L.R.4th 395.

Unemployment Compensation: burden of proof as to voluntariness of separation. 73 A.L.R.4th 1093.

Employee's use of drugs or narcotics, or related problems, as affecting eligibility for unemployment compensation. 78 A.L.R.4th 180.

Eligibility for unemployment compensation of employee who left employment based on belief that involuntary discharge was imminent. 79 A.L.R.4th 528.

Unemployment compensation: eligibility where claimant leaves employment under circumstances interpreted as a firing by the claimant but as a voluntary quit by the employer. 80 A.L.R.4th 7.

Unemployment compensation: Eligibility as affected by claimant's refusal to work at particular times or on particular shifts for domestic or family reasons. 2 A.L.R.5th 475.

Unemployment compensation: Leaving employment to become self-employed or to go into business for oneself as affecting right to unemployment compensation. 45 A.L.R.5th 715.

Unemployment compensation: Leaving employment in pursuit of other employment as affecting right to unemployment compensation. 46 A.L.R.5th 659.

Unemployment compensation: Leaving employment in pursuit of education or to attend training as affecting right to unemployment compensation. 47 A.L.R.5th 775.

Leaving employment or unavailability for particular job or duties because of sickness or disability, as affecting right to unemployment compensation. 68 A.L.R.5th 13.

Eligibility for unemployment compensation of employee who retires voluntarily. 75 A.L.R.5th 339.

Work-related inefficiency, incompetence, or negligence as "misconduct" barring unemployment compensation. 95 A.L.R.5th 329.

Unemployment compensation: Harassment or other mistreatment by coworker as "good cause" justifying abandonment of employment. 121 A.L.R.5th 467.

Use of employer's e-mail or internet system as misconduct precluding unemployment compensation.

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation §§ 29 et seq., 48 et seq., 52 et seq., 59 et seq., 76 et seq., 211.

24 Am. Jur. Pl & Pr Forms (Rev), Unemployment Compensation, Forms 1 et seq.; 11 et seq.; 31 et seq.; 51 et seq.

1 Am. Jur. Proof of Facts 2d 613, Suitability of Work — Unemployment Compensation.

9 Am. Jur. Proof of Facts 2d 697, Unemployment Compensation: Employer's Harassment or Other Mistreatment Justifying Employee's Abandonment of Employment.

36 Am. Jur. Proof of Facts 2d 701, Religiously Grounded Refusal to Work Certain Shifts as Affecting Unemployment Compensation Eligibility.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 380 et seq., 479.

Law Reviews. Constitutional law — first amendment — free exercise clause — expression of cultural and religious heritage is not grounds for denial of unemployment compensation. 61 Miss. L. J. 223, Spring, 1991.

Constructive Discharge: What It is, and What It Isn't, in Mississippi Employment Law, 21 Miss. C. L. Rev. 1, Fall, 2001.

Practice References. David L. Bacon, Employee Benefits Guide (Matthew Bender).

Employee Rights Litigation: Pleading and Practice (Matthew Bender).

Shawe and Rosenthal, Employment Law Deskbook (Matthew Bender).

Emerging Issues Analysis: Wages, Unemployment Compensation, Workers' Compensation, and Disability Payments Exemptions (LexisNexis).

§ 71-5-515. Filing.

Claims for benefits shall be made in accordance with such regulations as the commission may prescribe. Each employer shall post and maintain in places readily accessible to individuals in his service printed statements concerning such regulations or such other matters as the commission may by regulation prescribe. Each employer shall supply such individuals copies of such printed statements or materials relating to claims for benefits as the commission may by regulation prescribe. Such printed statements or materials shall be supplied by the commission to each employer without cost to him.

SOURCES: Codes, 1942, § 7380; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4a; Laws, 1964, ch. 442, § 1a.

Editor's Note — Section 71-5-101 provides that the term "Employment Security Commission" shall mean the Mississippi Department of Employment Security.

Cross References — Definitions of terms relative to claims, see §§ 71-5-11, 71-5-355.

Conditions of eligibility for benefits, see § 71-5-511.

JUDICIAL DECISIONS

1. In general.

Compliance with the statute or rules requiring an unemployment claimant to register for work and file a claim for benefits at the public unemployment office, and to continue to report at stated intervals during the waiting period, could not be waived by a mere receptionist in the waiting room of the employment office, and the claimant did not bring himself within either the terms of the statute or the rules and regulations prescribed thereunder, so as to be entitled to the compensation allowed, by showing that he presented his social security card to one of the ladies in the front office of the local unemployment compensation commission and that she informed him he would have to get his compensation benefits from the State of Tennessee, his employer being a Tennessee corporation and his employment being in that state. Unemployment Comp. Comm'n v. Barlow, 191 Miss. 156, 1 So. 2d 241 (1941).

RESEARCH REFERENCES

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation §§ 31, 88.

17C Am. Jur. Legal Forms 2d, Unemployment Compensation §§ 252:2 et seq.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 475 et seq.

§ 71-5-516. Disclosure of child support obligations on claim for benefits; deduction and withholding from benefit.

(1) An individual filing a new claim for benefits shall, at the time of filing such claim, disclose whether or not the individual owes child support obligations as defined under subsection (7). If any such individual discloses that he owes child support obligations, and is determined to be eligible for benefits, the commission shall notify the child support enforcement agency that the individual has been determined to be eligible for benefits.

(2) The commission shall deduct and withhold from any benefits payable to an individual that owes child support obligations as defined under subsection (7):

(a) The amount specified by the individual to the commission to be deducted and withheld under this subsection, if neither (b) nor (c) is applicable; or

(b) The amount (if any) determined pursuant to an agreement submitted to the commission under Section 454(19)(A)and(B)(i) of the Social Security Act by the child support enforcement agency, unless (c) is applicable; or

(c) Any amount otherwise required to be so deducted and withheld from such benefits pursuant to legal process (as that term is defined in Section 462(e) of the Social Security Act) properly served upon the commission. Transmittal of the information in subsection (b) or (c) by automated means shall constitute proper service of legal process upon the commission.

(3) Any amount deducted and withheld under subsection (2) shall be paid by the commission to the child support enforcement agency.

(4) Any amount deducted and withheld under subsection (2) shall for all purposes be treated as if it were paid to the individual as benefits and paid by such individual to the child support enforcement agency in satisfaction of the individual's child support obligations.

(5) For purposes of subsections (1) through (4), the term "benefits" means any compensation payable under this chapter (including amounts payable by the commission pursuant to an agreement under any federal law providing for compensation, assistance or allowances with respect to unemployment).

(6) This section applies only if appropriate arrangements have been made for reimbursement by the child support enforcement agency for the adminis-

trative costs incurred by the commission under this section which are attributable to child support obligations being enforced by the child support enforcement agency. No administrative costs of either the commission or the child support enforcement agency shall be deducted or withheld by the commission from any benefits payable, however. The amount to be deducted and withheld shall be in an even dollar amount, and the agency shall distribute the support collection in the manner prescribed by Title IV-D of the Social Security Act.

(7) The term "child support obligations" is defined for purposes of this section as including only obligations which are being enforced pursuant to a plan described in Section 454 of the Social Security Act which has been approved by the Secretary of Health and Human Services under Part D of Title IV of the Social Security Act.

SOURCES: Laws, 1982, ch. 480, § 4; Laws, 1986, ch. 332; Laws, 1991, ch. 406, § 1; Laws, 1993, ch. 346, § 1, eff from and after July 1, 1993.

Editor's Note — Section 71-5-101 provides that the term "Employment Security Commission" shall mean the Mississippi Department of Employment Security.

Cross References — Assignment of benefits and exemptions, see § 71-5-539.

Federal Aspects — Title IV D of Social Security Act, see 42 USCS §§ 651 et seq.

Sections 454 and 462 of the Social Security Act are classified at 42 USCS §§ 654 and 662.

RESEARCH REFERENCES

ALR. Unemployment compensation: termination of employment, known to be for a specific, limited duration, upon expiration of period, as voluntary. 30 A.L.R.4th 1201.

§ 71-5-517. Initial determination [Repealed effective July 1, 2014].

Upon the taking of a claim by the department, an initial determination thereon shall be made promptly and shall include a determination with respect to whether or not benefits are payable, the week with respect to which benefits shall commence, the weekly benefit amount payable and the maximum duration of benefits. In any case in which the payment or denial of benefits will be determined by the provisions of subsection A(4) of Section 71-5-513, the examiner shall promptly transmit all the evidence with respect to that subsection to the department, which, on the basis of evidence so submitted and such additional evidence as it may require, shall make an initial determination with respect thereto. An initial determination may for good cause be reconsidered. The claimant, his most recent employing unit and all employers whose experience-rating record would be charged with benefits pursuant to such determination shall be promptly notified of such initial determination or any amended initial determination and the reason therefor. Benefits shall be denied or, if the claimant is otherwise eligible, promptly paid in accordance with the initial determination or amended initial determination. The jurisdiction of the department over benefit claims which have not been appealed shall be continuous. The claimant or any party to the initial determination or amended initial determination may file an appeal from such initial determination or amended initial determination within fourteen (14) days after notification thereof, or after the date such notification was sent to his last known address.

Notwithstanding any other provision of this section, benefits shall be paid promptly in accordance with a determination or redetermination, or the decision of an appeal tribunal, the Board of Review or a reviewing court upon the issuance of such determination, redetermination or decision in favor of the claimant (regardless of the pendency of the period to apply for reconsideration, file an appeal, or petition for judicial review, as the case may be, or the pendency of any such application, filing or petition), unless and until such determination, redetermination or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits shall be paid or denied in accordance with such modifying or reversing redetermination or decision. Any benefits finally determined to have been erroneously paid may be set up as an overpayment to the claimant and must be liquidated before any future benefits can be paid to the claimant. If, subsequent to such initial determination or amended initial determination, benefits with respect to any week for which a claim has been filed are denied for reasons other than matters included in the initial determination or amended initial determination, the claimant shall be promptly notified of the denial and the reason therefor and may appeal therefrom in accordance with the procedure herein described for appeals from initial determination or amended initial determination.

SOURCES: Codes, 1942, § 7381; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4b; Laws, 1964, ch. 442, § 1b; Laws, 1972, ch. 375, § 1; Laws, 1977, ch. 352; Laws, 1986, ch. 316, § 3; Laws, 2004, ch. 572, § 40; Laws, 2007, ch. 606, § 15; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 40; reenacted without change, Laws, 2010, ch. 559, § 40; reenacted without change, Laws, 2011, ch. 471, § 41, eff from and after July 1, 2011.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, and as amended by Laws of 2011, ch. 471, § 59, provides:

"SECTION 60. This act shall stand repealed on July 1, 2014."

Amendment Notes — The 2010 amendment reenacted the section without change. The 2011 amendment reenacted the section without change.

Cross References — Employer's application for review and redetermination of contribution rate, see § 71-5-355.

JUDICIAL DECISIONS

1. In general.
2. Late notice of appeal.
3. —Failure to show good cause.

1. In general.

In an unemployment compensation case in which an employer's appeal to an administrative law judge was untimely under filed 38-000-006 Miss. Code R. § 200.01 and Miss. Code Ann. § 71-5-517 and the worker raised the timeliness issue for the first time in her appellate brief to the Mississippi Supreme Court, her claim was procedurally barred. Brown v. Miss. Dep't of Empl. Sec., 29 So. 3d 766 (Miss. 2010).

Mississippi Department of Employment Security was not entitled to use collection actions to recover unemployment benefits paid where there was no nondisclosure or fraud in the case of an employee who was later disqualified for misconduct; even if voluntary repayment was allowed, the language of the notice to the employee did not suggest that it was voluntary in nature. Acy v. Miss. Empl. Sec. Comm'n, — So. 2d —, 2007 Miss. App. LEXIS 54 (Miss. Ct. App. Feb. 6, 2007), substituted opinion at, opinion withdrawn by 960 So. 2d 592, 2007 Miss. App. LEXIS 469 (Miss. Ct. App. 2007).

Refusal to extend a 14-day deadline imposed on a motion for reconsideration was error because an employment commission had the discretion to accept new evidence and make appropriate adjustments to a prior decision awarding unemployment benefits where an employee had subsequently confessed to a crime; the deadline was not under Miss. Code Ann. § 71-5-517, but was stated in a letter to the employer. Herring Gas Co. v. Miss. Empl. Sec. Comm'n, 944 So. 2d 943 (Miss. Ct. App. 2006).

Decision of the circuit court that dismissed the employer's appeal because the employer did not file a timely administrative appeal as required by Miss. Code Ann. § 71-5-517 was affirmed; it was undisputed that the employer failed to file his administrative appeal within 14 days and there was no good cause for the delay. Herring Gas Co. v. Miss. Empl. Sec. Comm'n, — So. 2d —, 2006 Miss. App. LEXIS 530 (Miss. Ct. App. July 18, 2006), opinion withdrawn by, substituted opinion at 944 So. 2d 943, 2006 Miss. App. LEXIS 913 (Miss. Ct. App. 2006).

A hearing officer of the Mississippi Employment Security Commission does not conduct a trial de novo. Instead, the hearing officer is to receive all the evidence accumulated by the examiner, and then on the basis of evidence so submitted and such additional evidence as it may acquire, render an appellate decision. It is of no legal consequence that a party does not appear at a hearing. Estate of Dulaney v. Miss. Emp. Sec. Comm'n, 805 So. 2d 643 (Miss. Ct. App. 2002).

Once unemployment benefits commission received documents filed by the employee's former employer stating that the employee had voluntarily quit his job, the commission had good cause to reconsider its initial determination awarding benefits, even though the documents were untimely filed. Caraway v. Miss. Emp. Sec. Comm'n, 826 So. 2d 100 (Miss. Ct. App. 2002).

When there was no appeal from an initial determination, it was logical to assume that the Commission's jurisdiction over that determination did not continue indefinitely. Maxwell v. Mississippi Emp. Sec. Comm'n, 792 So. 2d 1031 (Miss. Ct. App. 2001).

Unemployment benefits paid to company employees during a strike could not be recouped by the Mississippi Employment Security Commission as a result of a monetary settlement of unfair labor practice charges before the National Labor Relations Board, since §§ 71-5-19(4) and 71-5-517 provided no basis, implicit or explicit, for recoupment of the benefits where there was no evidence of wrongdoing or misrepresentation by the employees. Jones v. Mississippi Emp. Sec. Comm'n, 648 So. 2d 1138 (Miss. 1995).

The Mississippi Employment Security Commission may not extend the statutory time limits for appeals absent a showing of some event not caused by a party which affected that party's substantial rights; thus, the Commission's practice of allowing an extra 3 days for delivery of the mail to be added to the 14-day time for appeal prescribed by § 71-5-517 exceeded its statutory authority. Wilkerson v. Mississippi Emp. Sec. Comm'n, 630 So. 2d 1000 (Miss. 1994).

Under § 71-5-517, a party to the initial determination — claimant or employer — has 14 days from the time that the notification is mailed to appeal to the Board of Review; only if the notification is by means other than mail to the party's last known address will the time begin to run upon notification of the claim. Wilkerson v. Mississippi Emp. Sec. Comm'n, 630 So. 2d 1000 (Miss. 1994).

Inasmuch as a notification of disqualification was inadvertently mailed to claimant's former address, even though he had previously notified the Employment Security Commission of his new address, the fourteen day time frame within which he had the right to appeal the decision did not begin to run from the date of mailing, but rather from the date on which the claimant actually received notification. Cane v. Mississippi Emp. Sec. Comm'n, 368 So. 2d 1263 (Miss. 1979).

2. Late notice of appeal.

3. —Failure to show good cause.

Where claimant was awarded benefits by a Mississippi Department of Employment Security claims examiner, the employer filed an untimely appeal of the decision of the Mississippi Department of Employment Security outside the fourteen-day period set forth in Miss. Code Ann. § 71-5-517; the circuit court could only decide the case in its favor if the employer could show good cause for its untimely appeal. The employer failed to provide sufficient evidence to overcome the presumption that the letter mailed by the MDES was timely delivered; therefore, the circuit court erred by reversing the decision awarding benefits. Miss. Dep't of Empl. Sec. v. Good Samaritan Pers. Servs., 996 So. 2d 809 (Miss. Ct. App. 2008).

Where the notice of an appeal hearing on the denial of a claimant's request for unemployment benefits was sent to her address on file as required by Miss. Code Ann. § 71-5-517, the administrative law judge did not err in concluding that the claimant had abandoned her appeal based upon her failure to appear and in denying the appeal. Tillmon v. Miss. Dep't of Empl. Sec., 996 So. 2d 825 (Miss. Ct. App. 2008).

Denial of unemployment benefits to the employee was appropriate because he failed to timely seek review of the denial of his claim for unemployment benefits. The employee failed to show good cause for the late notice of appeal because he did not provide any evidence that his failure to receive notice of the claims examiner's decision was due to an act beyond his control. Cerrato v. Miss. Empl. Sec. Comm'n, 968 So. 2d 957 (Miss. Ct. App. 2007).

RESEARCH REFERENCES

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation § 88.

17C Am. Jur. Legal Forms 2d, Unemployment Compensation §§ 252:2 et seq.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 475, 490-492, 508.

§ 71-5-519. Appeals [Repealed effective July 1, 2014].

Unless such appeal is withdrawn, an appeal tribunal appointed by the executive director, after affording the parties reasonable opportunity for fair hearing, shall affirm, modify or reverse the findings of fact and initial determination or amended initial determination. The parties shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision of the executive director unless, within fourteen (14) days after the date of notification of such decision, further appeal is initiated pursuant to Section 71-5-523.

SOURCES: Codes, 1942, § 7382; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4c; Laws, 1964, ch. 442, § 1c; Laws, 1977, ch. 448; Laws, 2004, ch. 572, § 41; Laws, 2007, ch. 606, § 16; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 41; reenacted without change, Laws, 2010, ch. 559, § 41;

reenacted without change, Laws, 2011, ch. 471, § 42, eff from and after July 1, 2011.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, and as amended by Laws of 2011, ch. 471, § 59, provides:

"SECTION 60. This act shall stand repealed on July 1, 2014."

Amendment Notes — The 2010 amendment reenacted the section without change. The 2011 amendment reenacted the section without change.

Cross References — Review of employer's rate of contributions, see § 71-5-355.

JUDICIAL DECISIONS

1. In general.
2. Delivery.

1. In general.

Because the Mississippi Employment Security Commission (MESC) was not a circuit, chancery or county court, the Mississippi Rules of Civil Procedure, and specifically Miss. R. Civ. P. 6, were not applicable to its administrative hearings or appeals. Miss. Empl. Sec. Comm'n v. Parker, 903 So. 2d 42 (Miss. 2005).

Employee timely filed her appeal to the Mississippi Employment Security Commission's (MESC) office on June 4, 2002, and the appeals referee held a hearing on June 26, 2002. The appeals referee mailed the decision affirming the claim examiner's decision to the employee on July 1, 2002, and the employee filed her notice of appeal to the MESC Board of Review on July 16, 2002; thus, the Mississippi Supreme Court, strictly construing the 14-day time period of Miss. Code Ann. § 71-5-519, held her appeal was untimely. Miss. Empl. Sec. Comm'n v. Parker, 903 So. 2d 42 (Miss. 2005).

Pursuant to Miss. R. Civ. P. 6(a) and 6(e), the claimant's time to appeal her case to the Mississippi Employment Security Commission Board of Review began on July 2, 2002, the day after the appeals referee mailed her decision to the claimant, and ended July 19, 2002, which reflected the addition of an additional three days for the claimant to respond, as required by Rule 6(e); therefore, the claimant's appeal was filed timely with the Board of Review. Miss. Empl. Sec. Comm'n v. Parker, 905 So. 2d 613 (Miss. Ct. App. 2004).

Decision of the Appeals Referee became final and binding on the Board of Review as of December 28, 2001; the deadline for the employer to file an appeal was December 28, 2001, and the Board of Review did not receive the employer's appeal until December 31, 2001, three days after the statutory period expired. Miss. Empl. Sec. Comm'n v. Marion County Sheriff's Dep't, 865 So. 2d 1153 (Miss. 2004).

Original circuit court's reverse and remand was not concerned with the merits of the truck driver's claim for unemployment benefits, but, rather, it was reversed on a procedural issue, namely, the timeliness of an appeal and remanded for a decision on the merits, and there was not a circuit court determination that the record was insufficient to decide whether the employer had produced enough evidence to support the discharge of its employee; thus, the Board of Review of the Mississippi Employment Security Commission's decision to bar review of the truck driver's appeal on timeliness grounds was indicative of the finality of the agency's decision, and the circuit court held that it was error to do so and therefore, the circuit court's reverse and remand on the issue of timeliness was not interlocutory in nature, and the employer should have appealed that decision. Southwood Door Co. v. Burton, 847 So. 2d 833 (Miss. 2003).

An appeal by the employer city in an unemployment compensation case was untimely where it was not filed within 14 days of the referee's decision, notwithstanding the assertion that notice of the decision was sent to the wrong address; the address to which the notice was sent was used by the city on numerous documents throughout the proceedings. City of Tupelo v. Mississippi Empl. Sec. Comm'n, 748 So. 2d 151 (Miss. 1999).

Notice of an employer's appeal of a referee's decision was sufficient to satisfy the claimant's minimum due process rights, where the Board of Review mailed a notice to the claimant but did not notify the claimant's attorney of the appeal. Notifying the claimant only and not the attorney satisfies minimum due process requirements so long as such notice is "reasonably calculated" to apprise the claimant of necessary information. Booth v. Mississippi Emp. Sec. Comm'n, 588 So. 2d 422 (Miss. 1991).

Where the Board of Review had remanded a cause to the referee for the taking of additional testimony but, without such testimony having been taken, the Board reversed the referee's original decision, it was error for the Board to reconsider and render its decision without first having given notice to the employee. Williams v. Mississippi Emp. Sec. Comm'n, 395 So. 2d 964 (Miss. 1981).

2. Delivery.

The statute demands more than the act of mailing; it also requires the result of delivery. Holt v. Mississippi Emp. Sec. Comm'n, 724 So. 2d 466 (Miss. Ct. App. 1998).

The defendant commission is required to consider evidence offered by the claimant and to determine whether it overcomes the presumption of delivery of mail; however, where the only evidence presented is a denial of receipt, the presumption is not overcome. Holt v. Mississippi Emp. Sec. Comm'n, 724 So. 2d 466 (Miss. Ct. App. 1998).

RESEARCH REFERENCES

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation § 88.

17C Am. Jur. Legal Forms 2d, Unemployment Compensation §§ 252:2 et seq.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 484-489.

§ 71-5-521. Appeal tribunals.

To hear and decide appealed claims, the board of review shall appoint one or more impartial appeal tribunals consisting in each case of either a referee, who shall be selected in accordance with Section 71-5-121, or a body consisting of three (3) members, one (1) of whom shall be a referee, who shall serve as chairman, one (1) of whom shall be a representative of employers, and the other of whom shall serve as a representative of employees. Each of the latter two (2) members shall serve at the pleasure of the board of review and be paid a fee of not more than Twenty Dollars ($20.00) per day for active service on such tribunals, plus necessary expenses. Referees shall be paid such salary or per diem as may be determined by the commission, and such expenses as may be allowed by the commission. No person shall participate on behalf of the commission or the board of review in any case in which he is an interested party. The board of review may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. The chairman shall act alone in the absence or disqualification of any other member and his alternates. In no case shall the hearings proceed unless the chairman of the appeal tribunal is present.

SOURCES: Codes, 1942, § 7383; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4d; Laws, 1964, ch. 442, § 1d.

Editor's Note — Section 71-5-101 provides that the term "Employment Security Commission" shall mean the Mississippi Department of Employment Security.

Cross References — Review of employer's rate of contributions or contribution liability, see § 71-5-355.

RESEARCH REFERENCES

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation, § 88.

17C Am. Jur. Legal Forms 2d, Unemployment Compensation §§ 252:2 et seq.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 490-492, 508.

§ 71-5-523. Board of review [Repealed effective July 1, 2014].

The Board of Review may on its own motion affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The Board of Review shall permit such further appeal by any of the parties to a decision of an appeal tribunal which is not unanimous, and by the examiner whose decision has been overruled or modified by an appeal tribunal. The Board of Review may remove to itself or transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceedings so removed to the Board of Review shall be heard by a quorum thereof in accordance with the requirements of Section 71-5-519 and within fifteen (15) days after notice of appeal has been received by the executive director. No notice of appeal shall be deemed to be received by the executive director, within the meaning of this section, until all prior appeals pending before the Board of Review have been heard. The Board of Review shall, within four (4) days after its decision, so notify the parties to any proceeding of its findings and decision.

SOURCES: Codes, 1942, § 7384; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4e; Laws, 1964, ch. 442, § 1e; Laws, 2004, ch. 572, § 42; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 42; reenacted without change, Laws, 2010, ch. 559, § 42; reenacted without change, Laws, 2011, ch. 471, § 43, eff from and after July 1, 2011.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, and as amended by Laws of 2011, ch. 471, § 59, provides:

"SECTION 60. This act shall stand repealed on July 1, 2014."

Amendment Notes — The 2010 amendment reenacted the section without change. The 2011 amendment reenacted the section without change.

Cross References — Commission's review of employer's rate of contributions or contribution liability, see § 71-5-355.

JUDICIAL DECISIONS

1. In general.

Where the Board of Review had remanded a cause to the referee for the taking of additional testimony but, without such testimony having been taken, the Board reversed the referee's original decision, it was error for the Board to reconsider and render its decision without first having given notice to the employee. Williams v. Mississippi Emp. Sec. Comm'n, 395 So. 2d 964 (Miss. 1981).

An order of the board of review of the employment security commission as to facts, if supported by evidence and in the absence of fraud, is conclusive upon the trial court on review. Mississippi Emp. Sec. Comm'n v. Fortenberry, 193 So. 2d 142 (Miss. 1966).

Board of review may consider appeal, at request of claimant, on the basis of the evidence submitted to the referee. Mississippi Emp. Sec. Comm'n v. Wilks, 247 Miss. 737, 156 So. 2d 583 (1963), motion granted, 251 Miss. 744, 171 So. 2d 157 (1965).

RESEARCH REFERENCES

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation § 88.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 490-492, 508.

§ 71-5-525. Procedure [Repealed effective July 1, 2014].

The manner in which appealed claims shall be presented and the conduct of hearings and appeals shall be in accordance with regulations prescribed by the Board of Review for determining the rights of the parties, whether or not such regulations conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all proceedings in connection with an appealed claim. The department's entire file relative to the appealed claim shall be a part of such record and shall be considered as evidence. All testimony at any hearing upon an appealed claim shall be recorded, but need not be transcribed unless the claim is further appealed.

SOURCES: Codes, 1942, § 7385; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4f; Laws, 1964, ch. 442, § 1f; Laws, 2004, ch. 572, § 43; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 43; reenacted without change, Laws, 2010, ch. 559, § 43; reenacted without change, Laws, 2011, ch. 471, § 44, eff from and after July 1, 2011.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, and as amended by Laws of 2011, ch. 471, § 59, provides:

"SECTION 60. This act shall stand repealed on July 1, 2014."

Amendment Notes — The 2010 amendment reenacted the section without change.

The 2011 amendment reenacted the section without change.

Cross References — Procedure for review of employer's rate of contributions or contribution liability, see § 71-5-355.

JUDICIAL DECISIONS

1. In general.

Pursuant to Miss. R. Civ. P. 6(a) and 6(e), the claimant's time to appeal her case to the Mississippi Employment Security Commission Board of Review began on July 2, 2002, the day after the appeals referee mailed her decision to the claimant, and ended July 19, 2002, which reflected the addition of an additional three days for the claimant to respond, as required by Rule 6(e); therefore, the claimant's appeal was filed timely with the Board of Review. Miss. Empl. Sec. Comm'n v. Parker, 905 So. 2d 613 (Miss. Ct. App. 2004).

Notice of an employer's appeal of a referee's decision was sufficient to satisfy the claimant's minimum due process rights, where the Board of Review mailed a notice to the claimant but did not notify the claimant's attorney of the appeal. Notifying the claimant only and not the attorney satisfies minimum due process requirements so long as such notice is "reasonably calculated" to apprise the claimant of necessary information. Booth v. Mississippi Emp. Sec. Comm'n, 588 So. 2d 422 (Miss. 1991).

Board of review may consider appeal, at request of claimant, on the basis of the evidence submitted to the referee. Mississippi Emp. Sec. Comm'n v. Wilks, 247 Miss. 737, 156 So. 2d 583 (1963), motion granted, 251 Miss. 744, 171 So. 2d 157 (1965).

RESEARCH REFERENCES

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation § 88.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 478 et seq.

§ 71-5-527. Witness fees.

Witnesses subpoenaed pursuant to Sections 71-5-515 through 71-5-533 shall be allowed fees at a rate fixed by the commission. Such fees shall be deemed a part of the expense of administering this chapter.

SOURCES: Codes, 1942, § 7386; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4g; Laws, 1964, ch. 442, § 1g.

Editor's Note — Section 71-5-101 provides that the term "Employment Security Commission" shall mean the Mississippi Department of Employment Security.

Cross References — Witness fees generally, see § 25-7-47 et seq.

§ 71-5-529. Appeal to courts [Repealed effective July 1, 2014].

Any decision of the Board of Review, in the absence of an appeal therefrom as herein provided, shall become final ten (10) days after the date of notification; and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his administrative remedies as provided by this chapter. The department shall be deemed to be a party to any judicial action involving any such decision, and may be represented in any such judicial action by any qualified attorney employed by the department and designated by it for that purpose or, at the department's request, by the Attorney General.

SOURCES: Codes, 1942, § 7387; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4h; Laws, 1964, ch. 442, § 1h; Laws, 2004, ch. 572, § 44; Laws, 2007, ch. 606, § 17; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 44; reenacted without change, Laws, 2010, ch. 559, § 44; reenacted without change, Laws, 2011, ch. 471, § 45, eff from and after July 1, 2011.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, and as amended by Laws of 2011, ch. 471, § 59, provides:

"SECTION 60. This act shall stand repealed on July 1, 2014."

Amendment Notes — The 2010 amendment reenacted the section without change. The 2011 amendment reenacted the section without change.

Cross References — Judicial review of employer's rate of contributions or contribution liability, see § 71-5-355.

JUDICIAL DECISIONS

1. Untimely appeal; standard of review.

Employer filed for appeal from the decision of the Board of Review of the Mississippi Employment Security Commission, more than two weeks after the statutory deadline and apparently, based on the circuit court's decision to deny the Commission's motion to dismiss, demonstrated the requisite "good cause" for the untimely filing. However, the appellate court was left to assume that fact since the transcripts were not to be found, and further review of the record revealed an absence of any evidence that might have supported a finding of good cause; thus, the employer's failure to provide such evidence, when viewed under the present law and the appellate court's standard of review, required reversal of the circuit court's decision ordering a new hearing on behalf of the employer. Miss. Empl. Sec. Comm'n v. Gilbert Home Health Agency, 909 So. 2d 1142 (Miss. Ct. App. 2005).

RESEARCH REFERENCES

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation § 89.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 493 et seq.

§ 71-5-531. Court review [Repealed effective July 1, 2014].

Within ten (10) days after the decision of the Board of Review has become final, any party aggrieved thereby may secure judicial review thereof by commencing an action, in the circuit court of the county in which the plaintiff resides, against the department for the review of such decision, in which action any other party to the proceeding before the Board of Review shall be made a defendant. In cases wherein the plaintiff is not a resident of the State of Mississippi, such action may be filed in the circuit court of the county in which the employer resides, the county in which the cause of action arose, or in the county of employment. In such action, a petition which need not be verified, but which shall state the grounds upon which a review is sought, shall be served upon the department or upon such person as the department may designate, and such service shall be deemed completed service on all parties; but there shall be left with the party so served as many copies of the petition as there are defendants, and the department shall forthwith mail one (1) such copy to each such defendant. With its answer, the department shall certify and file with said court all documents and papers and a transcript of all testimony taken in the matter, together with the Board of Review's findings of fact and decision therein. The department may also, in its discretion, certify to such court questions of law involved in any decision. In any judicial proceedings under this section, the findings of the Board of Review as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the court shall be confined to questions of law. Such actions, and the questions so certified, shall be heard in a summary manner and shall be given precedence over all other civil cases. An appeal may be taken from the decision of the circuit court of the county in which the plaintiff resides to the Supreme Court of Mississippi, in the same manner, but not inconsistent with the provisions of this chapter, as is provided in civil cases. It shall not be necessary, in any judicial proceeding under this section, to enter exceptions to the rulings of the Board of Review, and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding, the Board of Review shall enter an order in accordance with such determination. A petition for judicial review shall not act as a supersedeas or stay unless the Board of Review shall so order.

SOURCES: Codes, 1942, § 7388; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4i; Laws, 1964, ch. 442, § 1i; Laws, 1996, ch. 464, § 4; Laws, 2004, ch. 572, § 45; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 45; reenacted without change, Laws, 2010, ch. 559, § 45; reenacted without change, Laws, 2011, ch. 471, § 46, eff from and after July 1, 2011.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, and as amended by Laws of 2011, ch. 471, § 59, provides:

"SECTION 60. This act shall stand repealed on July 1, 2014."

Amendment Notes — The 2010 amendment reenacted the section without change.

The 2011 amendment reenacted the section without change.

Cross References — Signing petition for review, see § 1-3-75.

Judicial review of employer's rate of contribution or contribution liability, see § 71-5-355.

JUDICIAL DECISIONS

1. In general.
2. Collateral estoppel.
3. Supersedeas.
4. Review of findings of fact.
5. Review of the denial of benefits.
6. Time limitations.

1. In general.

Benefits claimant was properly denied unemployment compensation because substantial evidence showed that he voluntarily left his job under Miss. Code Ann. § 71-5-513(A)(1)(a) when he turned in his keys following a dispute over pay and a request for time off; moreover, he failed to show good cause for leaving due to this dispute because the job was not detrimental to his health, safety, morals, or physical fitness. Waldrup v. Miss. Empl. Sec. Comm'n, 951 So. 2d 597 (Miss. Ct. App. 2007).

Appellate court affirmed the trial court's ruling that the employee was terminated for misconduct and not entitled to unemployment benefits as the employee never disputed his three disciplinary write-ups when they occurred, and the employer's policy allowed it to pay the employee for the full 40-hour work week if he was less than five minutes late. Thus, the evidence supported the finding that the employee's actions constituted misconduct for having three write-ups in one year. Daniels v. Miss. Empl. Sec. Comm'n, 914 So. 2d 268 (Miss. Ct. App. 2005).

In an appeal from a decision of the Mississippi Employment Security Commission (MESC), and the circuit court's affirmance thereon, the facts were: (1) the employee was warned in regard to an excessive number of sick days, early leaves and absences; (2) he received an unsatisfactory performance review because he had not been cooperative with campus security; (3) he was disruptive at a campus physical plant and he left work without permission; (3) he was placed on probation regarding his job performance; and finally, (4) he was arrested for robbery and possession of a firearm by a convicted felon. In its infinite wisdom, the appellate court concluded the employee was terminated, not because of the aforementioned performance issues (unrelated to his incarceration), but because of the events which surrounded his two day incarceration; in that respect, the poor fellow did not want his employer to know about his arrest, so he had his girlfriend call his employer and state that he would be absent for two days, and without the employee's permission, the girlfriend told the employer that same was due his mother's illness; his girlfriend lied, but he did not, the appellate court concluded his employer did not need to know the reason for said two day absence, and the denial of his application for unemployment benefits was reversed. Broome v. Miss. Empl. Sec. Comm'n, 921 So. 2d 360 (Miss. Ct. App. 2005), reversed by 921 So. 2d 334, 2006 Miss. LEXIS 45 (Miss. 2006).

Pursuant to Miss. R. App. P. 2(a) and 4(a), the appellate court will not consider an appeal that is not timely filed. The former employee filed her notice of appeal regarding the denial of unemployment benefits roughly 42 days after the entry of the final judgment by the circuit court, and her appeal was subject to dismissal for that reason alone. Westbrook v. Miss. Empl. Sec. Comm'n, 910 So. 2d 1135 (Miss. Ct. App. 2005).

Employer filed for appeal from the decision of the Board of Review of the Mississippi Employment Security Commission, more than two weeks after the statutory deadline and apparently, based on the circuit court's decision to deny the Commission's motion to dismiss, demonstrated the requisite "good cause" for the untimely filing. However, the appellate court was left to assume that fact since the transcripts were not to be found, and further review of the record revealed an absence of any evidence that might have supported a finding of good cause; thus, the employer's failure to provide such evidence, when viewed under the present law and the appellate court's standard of review, required reversal of the circuit court's decision ordering a new hearing on behalf of the employer. Miss. Empl. Sec. Comm'n v. Gilbert Home Health Agency, 909 So. 2d 1142 (Miss. Ct. App. 2005).

There was substantial evidence to indicate that the employee violated the employer's policy prohibiting possession of a Zip drive on company premises. Further, substantial evidence was presented that the employee had knowledge that such action constituted a violation of company policy; therefore, the Mississippi Employment Security Commission Board of Review's decision to deny unemployment benefits was not arbitrary or capricious and was supported by substantial evidence. Howell v. Miss. Empl. Sec. Comm'n, 906 So. 2d 766 (Miss. Ct. App. 2004).

Circuit court failed to use the proper standard of review as provided in Miss. Code Ann. § 71-5-531 because the fact that the Mississippi Employment Security Commission's decision conflicted with the decisions of the claims examiner and the appeal's referee did not, in and of itself, make the Commission's decision arbitrary, capricious and not supported by substantial evidence and the applicable law. Credible evidence supported the Commission's decision that the claimant was disqualified from receiving unemployment benefits because her actions in refusing to comply with company policy regarding working closing shifts constituted misconduct as defined in Miss. Code Ann. § 71-5-513(A)(1)(b). Miss. Empl. Sec. Comm'n v. Noil, 878 So. 2d 1089 (Miss. Ct. App. 2004).

Pursuant to Miss. Code Ann. §§ 71-5-531 and 71-5-513, the decision of the Mississippi Employment Security Commission denying the claimant unemployment benefits on the basis of misconduct was arbitrary, capricious, and improper because the employer failed to demonstrate by substantial, clear, and convincing evidence that the claimant was terminated for misconduct since (1) the employer did not prove that the claimant received training in the handling of dirty linen; (2) there was no evidence that the claimant had been given a copy of the infection control manual or that he had even seen it before; (3) the employer admitted that the conduct of bringing dirty linen through the clean linen door on one occasion was not grounds for termination. Gordon v. Miss. Empl. Sec. Comm'n, 864 So. 2d 1013 (Miss. Ct. App. 2004).

Former employee argued that he was not collaterally estopped from raising his wrongful-termination-based claims against his former employer because the Mississippi Employment Security Commission (MESC) found that he was terminated for misconduct, as he had been denied a fair opportunity to litigate his state claims because he was prohibited from calling witnesses; this issue should have been raised through a direct appeal of the MESC's Board of Review decision under Miss. Code Ann. § 71-5-531. Raiola v. Chevron U.S.A., Inc., 872 So. 2d 79 (Miss. Ct. App. 2004).

Finding of fact by the Mississippi Employment Security Commission's Board of Review that a claimant was fired for misconduct is conclusive upon a court if it is supported by evidence and in the absence of fraud. Miss. Code Ann. § 71-5-531. Raiola v. Chevron U.S.A., Inc., 872 So. 2d 79 (Miss. Ct. App. 2004).

Where a trial court reversed the Mississippi Employment Security Commission's decision awarding unemployment benefits to a claimant, without giving a reason for doing so, the court's action was by definition arbitrary and capricious and was reversed. Miss. Empl. Sec. Comm'n v. Penn's Fish House, Inc., 866 So. 2d 503 (Miss. Ct. App. 2004).

Appellate court held that its task was to determine whether it was reasonable for the employee to believe he had been terminated; under the circumstances there was substantial evidence from which the appellate court could find that the employee believed he had been terminated due to the employer's attendance policy and in light of his unexcused absences, so he was entitled to unemployment benefits. Miss. Empl. Sec. Comm'n v. Nordstrom, 858 So. 2d 904 (Miss. Ct. App. 2003).

Administrative decision that a day care center worker who left the center without permission after an argument with her supervisor over the care of a child was properly terminated for misconduct and was, therefore, ineligible to receive unemployment compensation benefits was supported by substantial evidence that the worker was asked not to leave because the center would then be understaffed and was told that if she did leave she would be considered as having quit. Otto v. Miss. Empl. Sec. Comm'n, 839 So. 2d 547 (Miss. Ct. App. 2002).

The trial court erred in reversing the decision of the Mississippi Employment Security Commission which allowed unemployment insurance benefits to an employee discharged from her position where the cause of her discharge had been her employer's dissatisfaction with her work performance and some errors she had made in bookkeeping procedure but where there was no evidence to show that the employee had failed to perform the work to the best of her ability or had wilfully failed to follow any instructions given by her employer or that she had been guilty of any wilful or intentional neglect or any misappropriation of funds. Wheeler v. Arriola, 408 So. 2d 1381 (Miss. 1982).

This section [Code 1942, § 7388] clearly provides that judicial review of decisions of the board of review shall be confined to questions of law. Mississippi Emp. Sec. Comm'n v. Blasingame, 237 Miss. 744, 116 So. 2d 213 (1959); Mississippi Emp. Sec. Comm'n v. Ballard, 252 Miss. 418, 174 So. 2d 367 (1965).

The unemployment compensation commission has the right of appeal to the supreme court from any judgment against it by the circuit court. Unemployment Comp. Comm'n v. Barlow, 191 Miss. 156, 1 So. 2d 241 (1941).

2. Collateral estoppel.

Although a former employee's challenge to a ruling of the Mississippi Employment Security Commission under Miss. Code Ann. § 71-5-531 was barred because she voluntarily dismissed her appeal of the ruling and was thus unable to collaterally attack the decision, her ADEA retaliation claim under 29 U.S.C.S. § 623(d) was not barred by collateral estoppel. Cox v. Desoto County, 564 F.3d 745 (5th Cir. 2009), writ of certiorari denied by 130 S. Ct. 139, 175 L. Ed. 2d 35, 2009 U.S. LEXIS 6879, 78 U.S.L.W. 3171, 107 Fair Empl. Prac. Cas. (BNA) 672 (U.S. 2009).

Mississippi Employment Security Commission (MESC) found that plaintiff was terminated for misconduct and denied him unemployment benefits; as plaintiff failed to appeal the MESC's ruling, he was precluded by collateral estoppel from arguing in a civil action that the employer's termination decision was illegal. Raiola v. Chevron U.S.A., Inc., 872 So. 2d 79 (Miss. Ct. App. 2004).

3. Supersedeas.

Provisions of the unemployment compensation law stipulating that a petition for judicial review shall not act as a supersedeas or stay unless the board of review shall so order, and that such an appeal by the commission shall not have the effect of denying benefits to any claimant, do not make payments of awarded benefits prerequisite to an appeal to the supreme court from the circuit court judgment, there being a proviso merely for an appeal without supersedeas. Unemployment Comp. Comm'n v. Barlow, 191 Miss. 156, 1 So. 2d 241 (1941).

4. Review of findings of fact.

Substantial evidence supported the decision to deny a former prison employee unemployment benefits based on misconduct where the warden testified that inmates had taken items out of the kitchen while she was the kitchen supervisor, she had possessed unauthorized computer games at work, possibly causing them to be used on the computer in the food supervisor's office, she may have allowed an inmate into the kitchen who was not authorized to be in that location at that time, and she had brought unauthorized items into the correctional facility. Henry v. Miss. Dep't of Empl. Sec., 962 So. 2d 94 (Miss. Ct. App. 2007).

Where the school district failed to renew claimant's contract as a physical education teacher and head basketball coach based on its dissatisfaction with the basketball program and the physical education program, the cited reasons did not amount to the requisite misconduct necessary to preclude claimant from receiving unemployment benefits; the circuit court's decision affirming the award of unemployment benefits was supported by substantial evidence under Miss. Code Ann. § 71-5-531. Greenwood Pub. Sch. Dist. v. Miss. Dep't of Empl. Sec., 962 So. 2d 684 (Miss. Ct. App. 2007), writ of certiorari denied en banc by 962 So. 2d 38, 2007 Miss. LEXIS 479 (Miss. 2007).

Finding that the employee had not engaged in misconduct while on the job in an action concerning the denial of unemployment benefits was inappropriate based on the record, which consisted of the employee's testifying that she did not return to work after November 21, 2003, and that she did not provide her employer with a doctor's excuse; the circuit court's review should have been limited to questions of law as required by Miss. Code Ann. § 71-5-531. Bedford Care Ctr. v. Kirk, 935 So. 2d 1135 (Miss. Ct. App. 2006).

While trial court's decision to reverse the finding of the Mississippi Employment Security Commission (MESC) Board of Review that held that the employee had quit her job voluntarily as it was not supported by substantial evidence was affirmed, the trial court erred in making a factual determination as to whether the employee had quit or had been fired as the trial court sat as a court of appeals and its jurisdiction was confined to questions of law. Gilbreath v. Miss. Empl. Sec. Comm'n, 910 So. 2d 682 (Miss. Ct. App. 2005).

Decision of the Board of Review for the Mississippi Employment Security Commission denying unemployment benefits was supported by substantial evidence, where the referee found the employee at a casino accepted a gratuity from a patron in the form of a "comp ticket," which security guards were not allowed to give under the employer's established policy; such conduct showed an intentional disregard of the employer's interest. Hardy v. Miss. Empl. Sec. Comm'n, 864 So. 2d 1045 (Miss. Ct. App. 2004).

Evidence was sufficient to support the finding that the claimant's misconduct in not divulging the computer password to the employee was conduct evincing such willful and wanton disregard of the employer's interest as was found in deliberate violations or disregard of standards of behavior which the employer had the right to expect from his employee; the employer had an expectation that the claimant would divulge the password so that its daily operations could be carried out. Brown v. Magnolia Reg'l Health Ctr., 847 So. 2d 297 (Miss. Ct. App. 2003).

Denial by the Board of Review of the Mississippi Employment Security Commission of unemployment benefits for employee misconduct under Miss. Code Ann. § 71-5-513A(1)(b) was supported by substantial evidence and was conclusive under Miss. Code Ann. § 71-5-531 where the employee was discharged for smoking while hazardous waste was on a forklift; the smoking incident rose to the level of misconduct under the unemployment law as the employee had been cited for four safety violations in the previous seven months, two of which had resulted in suspensions. Miss. Empl. Sec. Comm'n v. Barnes, 853 So. 2d 153 (Miss. Ct. App. 2003).

Findings of fact by Employment Security Commission Board of Review are conclusive if supported by substantial evidence and without fraud. Hoerner Boxes, Inc. v. Mississippi Emp. Sec. Comm'n, 693 So. 2d 1343 (Miss. 1997).

An employer failed to meet his burden of proving disqualifying misconduct, arising from a fight between 2 employees, by substantial, clear and convincing evidence, where the only eyewitness who testified at the hearing was the employee, and the employer offered a report prepared by a security officer, an unsigned summary of witness testimony without any proof of who prepared it, 3 handwritten statements of witnesses, and a list of safety rules which included a prohibition of fighting or provoking a fight, since uncorroborated hearsay testimony is insufficient to rise to the required level of substantial evidence. Mississippi Emp. Sec. Comm'n v. McLane-Southern, Inc., 583 So. 2d 626 (Miss. 1991).

Scope of review of both Supreme Court and Circuit Court is limited to findings of Board of Review, and order of Board of Review on facts is conclusive if supported by substantial evidence, absent fraud. Melody Manor, Inc. v. McLeod, 511 So. 2d 1383 (Miss. 1987).

Findings by Board of Review of Employment Security Commission that claimant was overpaid because of error in initial evaluation of claim was determination of fact which should not be reversed by circuit court since it was supported by substantial evidence, but question whether overpayment could be collected was not passed upon by referee or Board, and thus court should not pass upon questions of law not determined by administrative agencies. Mississippi Emp. Sec. Comm'n v. Sellers, 505 So. 2d 281 (Miss. 1987).

The word "evidence" in the statute should be construed to mean substantial evidence; thus, a denial of unemployment compensation would be reversed where the only evidence supporting the decision was a hearsay letter alleging that the employee had refused an offer of work. Williams v. Mississippi Emp. Sec. Comm'n, 395 So. 2d 964 (Miss. 1981).

In an action by an employer against the Mississippi Employment Security Commission challenging a ruling that employees were entitled to unemployment benefits as the result of an unjustified lockout by the employer, the circuit court erred in reversing the decision of the Commission where there was substantial evidence to support the finding that the lockout was occasioned solely by the employer and was without justification and that the employees were ready and willing to continue working. Mississippi Emp. Sec. Comm'n v. Georgia-Pacific Corp., 394 So. 2d 299 (Miss. 1981).

An order of the board of review of the employment security commission as to facts, if supported by evidence and in the absence of fraud, is conclusive upon the trial court on review. Mississippi Emp. Sec. Comm'n v. Fortenberry, 193 So. 2d

142 (Miss. 1966); Mississippi Emp. Sec. Comm'n v. Mixon, 248 Miss. 399, 159 So. 2d 181 (1964); Mississippi Emp. Sec. Comm'n v. Wilks, 247 Miss. 737, 156 So. 2d 583 (1963), motion granted, 251 Miss. 744, 171 So. 2d 157 (1965).

Where evidence amply supported the finding of the commission that an employee who quit her job in a moment of pique during a brief misunderstanding with her employer had quit suitable employment voluntarily and was not entitled to benefits, the court was without statutory authority to enter a contrary judgment. Mississippi Emp. Sec. Comm'n v. Rakestraw, 254 Miss. 56, 179 So. 2d 830 (1965).

Finding of board of review that claimant voluntarily left her employment because of pregnancy, held supported by substantial evidence. Mississippi Emp. Sec. Comm'n v. Corley, 246 Miss. 43, 148 So. 2d 715 (1963).

Findings of fact by the board of review under the unemployment compensation law, being amply supported, should have been taken as conclusive both by the trial court and the supreme court on review. Mississippi Unemployment Comp. Comm'n v. Avent, 192 Miss. 94, 4 So. 2d 684 (1941).

5. Review of the denial of benefits.

Employee sought unemployment benefits after she was terminated from her employment with a city. A circuit court did not err in determining employee was entitled to benefits because the city failed to meet its burden of establishing substantial, clear, and convincing proof that the employee was discharged for misconduct. Miss. Empl. Sec. Comm'n v. Johnson, 9 So. 3d 1170 (Miss. Ct. App. 2009).

Where an attorney appealed the denial of unemployment benefits, sufficient evidence supported the decision to deny the attorney unemployment benefits because the evidence supported the finding of misconduct based on the attorney's failure to complete tasks adequately. Cummings v. Miss. Dep't of Empl. Sec., 980 So. 2d 340 (Miss. Ct. App. 2008).

Where the claimant was denied unemployment compensation benefits by the Mississippi Employment Security Commission, he initiated a timely appeal to the Board of Review by filing a second interstate claim form within the fourteen-day deadline set forth in Miss. Code Ann. § 71-5-519. Miss. Empl. Sec. Comm'n v. Ward, 923 So. 2d 264 (Miss. Ct. App. 2006).

6. Time limitations.

Where an attorney appealed the denial of unemployment benefits, it was error to find that the attorney's appeal was untimely based on the failure to include a civil cover sheet, because the attorney demonstrated good cause for an extension of the filing deadline since the cover sheet requirement did not bar the otherwise timely notice of appeal. Cummings v. Miss. Dep't of Empl. Sec., 980 So. 2d 340 (Miss. Ct. App. 2008).

RESEARCH REFERENCES

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation §§ 89, 90.

24 Am. Jur. Pl & Pr Forms (Rev), Unemployment Compensation, Forms 11 et seq.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 493 et seq.

§ 71-5-533. Appeal by commission.

The commission shall be authorized to appeal from decisions of the board of review involving questions of interpretation of this chapter. Such appeals shall be served upon the other parties to the decision of the board of review and shall be heard by the courts in the manner as provided in Section 71-5-531. Such an appeal by the commission under this section shall not have the effect of denying benefits to any claimant who has been awarded benefits by virtue of the decision of the board of review from which the appeal is taken.

SOURCES: Codes, 1942, § 7389; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4j; Laws, 1964, ch. 442, § 1j.

Editor's Note — Section 71-5-101 provides that the term "Employment Security Commission" shall mean the Mississippi Department of Employment Security.

JUDICIAL DECISIONS

1. In general.

Provisions of the unemployment compensation law stipulating that a petition for judicial review shall not act as a supersedeas or stay unless the board of review shall so order, and that such an appeal by the commission shall not have the effect of denying benefits to any claimant, do not make payments of awarded benefits a prerequisite to an appeal to the supreme court from the circuit court judgment, there being a proviso merely for an appeal without supersedeas. Unemployment Comp. Comm'n v. Barlow, 191 Miss. 156, 1 So. 2d 241 (1941).

RESEARCH REFERENCES

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation § 89.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 493 et seq.

§ 71-5-535. Waiver of rights void.

Any agreement by an individual to waive, release, or commute his right to benefits or any other rights under this chapter shall be void. Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this chapter from such employer, shall be void. No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from him, or require or accept any waiver of any right hereunder by any individual in his employ. Any employer or officer or agent of an employer who violates any provision of this section shall, for each offense, be fined not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00), or be imprisoned for not more than six (6) months, or both.

SOURCES: Codes, 1942, § 7434; Laws, 1936, ch. 176; Laws, 1938, ch. 147.

RESEARCH REFERENCES

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation § 29.

CJS. 81 C.J.S., Social Security and Public Welfare § 396.

§ 71-5-537. Limitation of fees.

No individual claiming benefits shall be charged fees of any kind in any proceeding under this chapter by the board of review, the commission, their representatives, or by any court or any officer thereof. Any individual claiming benefits in any proceedings before the commission, the board of review, their representatives, or a court may be represented by counsel or other duly authorized agent; but no such counsel or agents shall either charge or receive for such services more than an amount approved by the board of review. Any person who violates any provision of this section shall, for each such offense, be fined not less than Fifty Dollars ($50.00) nor more than Five Hundred Dollars ($500.00), or imprisoned for not more than six (6) months, or both.

SOURCES: Codes, 1942, § 7435; Laws, 1936, ch. 176; Laws, 1938, ch. 147.

Editor's Note — Section 71-5-101 provides that the term "Employment Security Commission" shall mean the Mississippi Department of Employment Security.

Cross References — Limitation of fees in workmen's compensation cases, see § 71-3-63.

JUDICIAL DECISIONS

1. In general.

An employee was exempt under § 71-5-537 from paying court costs in pursuing his appeal from a denial of unemployment compensation benefits. Coleman v. Mississippi Emp. Sec. Comm'n, 662 So. 2d 626 (Miss. 1995).

The provisions of this section [Code 1942, § 7435] clearly do not exempt the employment security commission from the payment of court costs. Mississippi Emp. Sec. Comm'n v. Wilks, 251 Miss. 744, 171 So. 2d 157 (1965).

The board of review is not required to approve, prior to hearing of an appeal to it, a contract fixing the fee of claimant's attorney. Mississippi Emp. Sec. Comm'n v. Wilks, 247 Miss. 737, 156 So. 2d 583 (1963), motion granted, 251 Miss. 744, 171 So. 2d 157 (1965).

Limitation of fee of attorney appearing before board of review held not to deprive claimant of constitutional right where neither claimant nor his attorney appeared at the hearing of the appeal. Mississippi Emp. Sec. Comm'n v. Wilks, 247 Miss. 737, 156 So. 2d 583 (1963), motion granted, 251 Miss. 744, 171 So. 2d 157 (1965).

RESEARCH REFERENCES

ALR. Attorneys' fees: cost of services provided by paralegals or the like as compensable element of award in state court. 73 A.L.R.4th 938.

§ 71-5-539. No assignment of benefits; exemptions.

Any assignment, pledge or incumbrance of any right to benefits which are or may become due or payable under this chapter shall be void. Such rights to benefits shall be exempt from levy, execution, attachment or any other remedy whatsoever provided for the collection of debt; and benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessities furnished to such individual or his spouse or dependents during the time when such individual was unemployed. Any waiver of any exemption provided in this section shall be void. This section does not apply to the deduction from benefits provided by Section 71-5-516.

SOURCES: Codes, 1942, § 7436; Laws, 1936, ch. 176; Laws, 1938, ch. 147; Laws, 1982, ch. 480, § 5, eff from and after October 1, 1982.

Cross References — Property exempt from execution generally, see §§ 85-3-1 et seq.

§ 71-5-541. Construction [Repealed effective July 1, 2014].

A.(1) In the administration of this chapter, the department shall cooperate with the Department of Labor to the fullest extent consistent with the provisions of this chapter and shall take such action, through the adoption of appropriate rules, regulations, administrative methods and standards, as may be necessary to secure to this state and its citizens all advantages available under the provisions of the Social Security Act that relate to unemployment compensation, the Federal Unemployment Tax Act, the Wagner-Peyser Act and the Federal-State Extended Unemployment Compensation Act of 1970, all as amended.

(2) In the administration of the provisions of this section, which are enacted to conform with the requirements of the Federal-State Extended Unemployment Compensation Act of 1970, as amended, the department shall take such actions as may be necessary:

(a) To ensure that the provisions are so interpreted and applied as to meet the requirements of such federal act as interpreted by the United States Department of Labor; and

(b) To secure to this state the full reimbursement of the federal share of extended benefits paid under this chapter that are reimbursable under the federal act; and also

(c) To limit the amount of extended benefits paid as may be necessary so that the reimbursement of the federal share of extended benefits paid shall remain at one-half (½) of the total extended benefits paid.

B. As used in this section, unless the context clearly requires otherwise:

(1) "Extended benefit period" means a period which:

(a) Begins with the third week after a week for which there is a state "on" indicator; and

(b) Ends with either of the following weeks, whichever occurs later:

(i) The third week after the first week for which there is a state "off" indicator; or

(ii) The thirteenth consecutive week of such period.

No extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state.

(2) For weeks beginning after September 25, 1982, there is a "state 'on' indicator" for a week if the rate of insured unemployment under this chapter for the period consisting of such week and the immediately preceding twelve (12) weeks:

(a) Equaled or exceeded one hundred twenty percent (120%) of the average of such rates for the corresponding period of thirteen (13) weeks ending in each of the preceding two (2) calendar years; and

(b) Equaled or exceeded five percent (5%).

The determination of whether there has been a state "on" or "off" indicator beginning or ending any extended benefit period shall be made under this subsection as if (i) paragraph (2) did not contain subparagraph (a) thereof, and (ii) the figure "5" contained in subparagraph (b) thereof were "6"; except that, notwithstanding any such provision of this subsection, any week for which there would otherwise be a "state 'on' indicator" shall continue to be such week and shall not be determined to be a week for which there is a "state 'off' indicator."

(3) There is a "state 'off' indicator" for a week if, for the period consisting of such week and the immediately preceding twelve (12) weeks, either subparagraph (a) or (b) of paragraph (2) was not satisfied.

(4) "Rate of insured unemployment," for purposes of paragraphs (2) and (3) of this subsection, means the percentage derived by dividing:

(a) The average number of continued weeks claimed for regular state compensation in this state for weeks of unemployment with respect to the most recent period of thirteen (13) consecutive weeks, as determined by the department on the basis of its reports to the United States Secretary of Labor; by

(b) The average monthly employment covered under this chapter for the first four (4) of the most recent six (6) completed calendar quarters ending before the end of such period of thirteen (13) weeks.

(5) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 USCS Section 8501-8525) other than extended benefits.

(6) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 USCS Section 8501-8525) payable to an individual under the provisions of this section for weeks of unemployment in his eligibility period.

(7) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(8) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

(a) Has received, prior to such week, all of the regular benefits that were available to him under this chapter or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 USCS Section 8501-8525) in his current benefit year that includes such week.

For the purposes of this subparagraph, an individual shall be deemed to have received all of the regular benefits that were available to him although, as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits; or

(b) Has no, or insufficient, wages on the basis of which he could establish a new benefit year that would include such week, his benefit year having expired prior to such week; and

(c)(i) Has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965, and such other federal laws as are specified in regulations issued by the United States Secretary of Labor; and

(ii) Has not received and is not seeking unemployment benefits under the Unemployment Compensation Law of the Virgin Islands or of Canada; but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law, he is considered an exhaustee; however, the reference in this subsection to the Virgin Islands shall be inapplicable effective on the day on which the United States Secretary of Labor approves under Section 3304(a) of the Internal Revenue Code of 1954, an unemployment compensation law submitted to the Secretary by the Virgin Islands for approval.

(9) "State law" means the unemployment insurance law of any state, approved by the United States Secretary of Labor under Section 3304 of the Internal Revenue Code of 1954 (26 USCS Section 3304).

C. Except when the result would be inconsistent with the other provisions of this section, as provided in the regulations of the department, the provisions of this chapter which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

D. An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the department finds that with respect to such week:

(1) He is an "exhaustee" as defined in subsection B(8) of this section.

(2) He has satisfied the requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits.

(3) For a week beginning after September 25, 1982, he has, during his base period, been paid wages for insured work equal to not less than forty (40) times his weekly benefit amount; he has been paid wages for insured work during at least two (2) quarters of his base period, and he has, during that quarter of his base period in which his total wages were highest, been paid wages for insured work equal to not less than twenty-six (26) times the minimum weekly benefit amount.

E. The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year; however, benefits paid to individuals during eligibility periods beginning before October 1, 1983, shall be computed to the next higher multiple of One Dollar ($1.00), if not a multiple of One Dollar ($1.00); and benefits paid to individuals during eligibility periods beginning on or after October 1, 1983, shall be computed to the next lower multiple of One Dollar ($1.00), if not a multiple of One Dollar ($1.00). In no event shall the weekly extended benefit amount payable to an individual be more than two (2) times the amount of the reimbursement of the federal share of extended benefits paid.

F.(1) The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the least of the following amounts:

(a) Fifty percent (50%) of the total amount of regular benefits which were payable to him under this chapter in his applicable benefit year; however, benefits paid to individuals during eligibility periods beginning before October 1, 1983, shall be computed to the next higher multiple of One Dollar ($1.00), if not a multiple of One Dollar ($1.00), and benefits paid to individuals during eligibility periods beginning on or after October 1, 1983, shall be computed to the next lower multiple of One Dollar ($1.00), if not a multiple of One Dollar ($1.00); or

(b) Thirteen (13) times his weekly benefit amount which was payable to him under this chapter for a week of total unemployment in the applicable benefit year.

(2) The total extended benefits otherwise payable to an individual who is filing an interstate claim under the interstate benefit payment plan shall not exceed two (2) weeks whenever an extended benefit period is not in effect for such week in the state where the claim is filed.

(3) In no event shall the total extended benefit amount payable to any eligible individual with respect to his applicable benefit year be more than two (2) times the amount of the reimbursement of the federal share of extended benefits paid.

G.(1) Whenever an extended benefit period is to become effective in this state as a result of a state "on" indicator, or an extended benefit period is to be terminated in this state as a result of state "off" indicators, the department shall make an appropriate public announcement.

(2) Computations required by the provisions of subsection B(4) shall be made by the department, in accordance with regulations prescribed by the United States Secretary of Labor.

H. Extended benefits paid under the provisions of this section which are not reimbursable from federal funds shall be charged to the experience-rating record of base period employers.

I.(1) Notwithstanding the provisions of subsections C and D of this section, an individual shall be disqualified for receipt of extended benefits if the department finds that during any week of his eligibility period:

(a) He has failed either to apply for or to accept an offer of suitable work (as defined under paragraph (3)) to which he was referred by the department; or

(b) He has failed to furnish tangible evidence that he has actively engaged in a systematic and sustained effort to find work, unless such individual is not actively engaged in seeking work because such individual is:

(i) Before any court of the United States or any state pursuant to a lawfully issued summons to appear for jury duty;

(ii) Hospitalized for treatment of an emergency or a life-threatening condition.

The entitlement to benefits of any individual who is determined not to be actively engaged in seeking work in any week for the foregoing reasons shall be decided pursuant to the able and available requirements in Section 71-5-511 without regard to the disqualification provisions otherwise applicable under Section 71-5-541. The conditions prescribed in items (i) and (ii) of this subparagraph (b) must be applied in the same manner to individuals filing claims for regular benefits.

(2) Such disqualification shall begin with the week in which such failure occurred and shall continue until he has been employed in each of eight (8) subsequent weeks (whether or not consecutive) and has earned remuneration for personal services performed for an employer, as in this chapter defined, equal to not less than eight (8) times his weekly extended benefit amount.

(3) For the purpose of subparagraph (a) of paragraph (1) the term "suitable work" means any work which is within the individual's capabilities to perform, if:

(a) The gross average weekly remuneration payable for the work exceeds the sum of the individual's weekly extended benefit amount plus the amount, if any, of supplemental unemployment benefits (as defined in Section 501(c)(17)(D) of the Internal Revenue Code of 1954) payable to such individual for such week;

(b) The wages payable for the work equal the higher of the minimum wages provided by Section 6(a)(1) of the Fair Labor Standards Act of 1938 (without regard to any exemption), or the state or local minimum wage; and

(c) The position was offered to the individual in writing or was listed with the state employment service; and

(d) Such work otherwise meets the definition of "suitable work" for regular benefits contained in Section 71-5-513A(4) to the extent that such criteria of suitability are not inconsistent with the provisions of this paragraph (3); and

(e) The individual cannot furnish satisfactory evidence to the department that his prospects for obtaining work in his customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work contained in Section 71-5-513A(4) without regard to the definition specified by this paragraph (3).

(4) Notwithstanding any provisions of subsection I to the contrary, no work shall be deemed to be suitable work for an individual which does not accord with the labor standard provisions set forth herein under Section 71-5-513A(4).

(5) The employment service shall refer any claimant entitled to extended benefits under this section to any suitable work which meets the criteria prescribed in paragraph (3).

(6) An individual shall be disqualified for extended benefits for the week, or fraction thereof, which immediately follows the day on which he left work voluntarily without good cause (as defined in Section 71-5-513A(1)), was discharged for misconduct connected with his work, or refused suitable work (except as provided in subsection I of this section), and for each week thereafter until he has earned remuneration for personal services performed for an employer, as in this chapter defined, equal to not less than eight (8) times his weekly benefit amount, as determined in each case.

(7) The provisions of subsection I(1) through (6) of this section shall not apply to claims for weeks of unemployment beginning after March 6, 1993, and before January 1, 1995, and during that period the provisions of this chapter applicable to claims for regular compensation shall apply.

J. Notwithstanding any other provisions of this chapter, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would, but for this section, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero) by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

SOURCES: Codes, 1942, § 7389.5; Laws, 1971, ch. 519, § 15; Laws, 1977, ch. 497, § 9; Laws, 1981, ch. 466, § 2; Laws, 1982, ch. 480, § 6; Laws, 1983, ch. 364, § 5; Laws, 1984, ch. 498, § 4; Laws, 1986, ch. 316, § 4; Laws, 1986, ch. 335; Laws, 1993, ch. 329, § 1; Laws, 2004, ch. 572, § 46; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 46; reenacted without change, Laws, 2010, ch. 559, § 46; reenacted without change, Laws, 2011, ch. 471, § 47, eff from and after July 1, 2011.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected errors in statutory references by substituting "The conditions prescribed in items (i) and (ii) of this subparagraph (b)" for "The conditions prescribed in clauses (i) and (ii) of this subparagraph (b)" in the last paragraph of (I)(1)(b) and "The provisions of subsection I(1) through (6) of this section" for "The provisions of paragraphs (I)(1) through (6) of this section" in (7). The Joint Committee ratified the corrections at its July 13, 2011, meeting.

Editor's Note — Laws of 1977, ch. 497, § 10, provides:

"SECTION 10. In the event the provisions of P.L. 94-566, the Unemployment Compensation Amendments of 1976, which mandate unemployment insurance coverage for state and local government employees, are declared unconstitutional, the amendments, which mandate unemployment insurance coverage for state and local government employees, adopted to Sections 71-5-11, 71-5-351, 71-5-355, 71-5-357, 71-5-359, 71-5-361, 71-5-511, 71-5-513 and 71-5-541, Mississippi Code of 1972, at the 1977 Regular Session of the Legislature shall stand repealed."

Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, and as amended by Laws of 2011, ch. 471, § 59, provides:

"SECTION 60. This act shall stand repealed on July 1, 2014."

Amendment Notes — The 2010 amendment reenacted the section without change.

The 2011 amendment reenacted the section without change.

Cross References — Experience-rating record of employers, see § 71-5-355.

Federal Aspects — Trade Expansion Act of 1962, see 19 USCS §§ 1801 et seq.

Automotive Products Trade Act of 1965, see 19 USCS §§ 2001 et seq.

Federal Unemployment Tax Act, see 26 USCS §§ 3301 et seq.

Wagner-Peyser Act, see 29 USCS §§ 49 et seq.

Fair Labor Standards Act of 1938, see 29 USCS §§ 201 et seq.

Section 6(a)(1) of the Fair Labor Standards Act of 1938 is classified at 29 USCS § 206(a)(1).

Social Security Act, see 42 USCS §§ 301 et seq.

Railroad Unemployment Insurance Act, see 45 USCS §§ 351 et seq.

JUDICIAL DECISIONS

1. In general.

Insubordination is misconduct within the Mississippi Employment Security Law, "ordinarily adequate that benefits be denied." Mississippi Emp. Sec. Comm'n v. McGlothin, 556 So. 2d 324 (Miss. 1990), cert. denied, 498 U.S. 879, 111 S. Ct. 211, 112 L. Ed. 2d 171 (1990).

A state may not deny unemployment benefits on the ground that the individual has refused to abandon sincerely held religious beliefs. Mississippi Emp. Sec. Comm'n v. McGlothin, 556 So. 2d 324 (Miss. 1990), cert. denied, 498 U.S. 879, 111 S. Ct. 211, 112 L. Ed. 2d 171 (1990).

A public school teacher's wearing of a head-wrap as an expression of her religious and cultural heritage as a member of the African Hebrew Israelites in violation of the school's dress code was constitutionally protected religious and cultural expression, such that the Mississippi Employment Security Commission had no authority to deny her claim for unemployment compensation benefits after she was discharged for insubordination when she refused to discontinue wearing the head-wrap, even though there is no specific tenet of the African Hebrew Israelites mandating that women wear headdress, the teacher was not a regular participant in the organized activities of a particular church, synagogue or other religious body, she might have been "selective in wearing the traditional head-wrap" in that at times she did not wear it, and even though her conduct may have been misconduct had it not been constitutionally protected expression. Mississippi Emp. Sec. Comm'n v. McGlothin, 556 So. 2d 324 (Miss. 1990), cert. denied, 498 U.S. 879, 111 S. Ct. 211, 112 L. Ed. 2d 171 (1990).

RESEARCH REFERENCES

ALR. Unemployment compensation: Leaving employment in pursuit of other employment as affecting right to unemployment compensation. 46 A.L.R.5th 659.

Am Jur. 76 Am. Jur. 2d, Unemployment Compensation §§ 6, 7.

CJS. 81 C.J.S., Social Security and Public Welfare §§ 7-11.

§ 71-5-543. Authorization to waive recovery of benefits paid to ineligible persons under certain circumstances.

(1) Except as otherwise provided in this section, the executive director of the department may waive recovery of benefits paid under this chapter to a person if the person is subsequently found to be ineligible for the benefit and

the benefits were paid as a direct result of unemployment caused by a natural disaster which is declared by the President of the United States in accordance with Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. All waivers shall be granted based upon a consistent methodology and shall include consideration of ability to repay and other similar considerations.

(2) The waiver authorized in subsection (1) of this section shall not be granted if:

(a) The individual receiving the benefit is found to be guilty of fraud involving filing for, or receipt of, the benefits; or

(b) The size of fund index (as defined in Section 71-5-355) for the year in which a request for a waiver is made is less than five-tenths (.5).

(3) All waiver requests shall be considered on a case by case basis.

SOURCES: Laws, 2007, ch. 606, § 2, eff from and after July 1, 2007.

Federal Aspects — Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, is Act May 22, 1974, P.L. 93-288, 88 Stat. 143, which is codified generally as 42 USCS §§ 5121 et seq.

CHAPTER 7

Drug and Alcohol Testing of Employees

Sec.

71-7-1. Definitions.
71-7-3. Election of employer to conduct drug and alcohol testing voluntary; furnishing by employers of written policy statements on drug and alcohol use prior to implementation of testing; dissemination; standard language; notification of job applicants; signing of statements regarding testing policies by applicants or employees; testing of government employees, applicants, and elected officials.
71-7-5. Conduct of testing generally; authorized types of tests.
71-7-7. Neutral selection drug and alcohol testing; routine testing; testing of employees participating in rehabilitation.
71-7-9. Collection, storage and transportation of specimens; time of testing; rights of employees upon receipt of positive results; discharge, discipline, etc., of employees generally; payment of costs of testing.
71-7-11. Conduct of confirmation tests.
71-7-13. Designation of employee or applicant as handicapped due to test result; discharge, discipline, etc., of employee on basis of test result or refusal to submit; construction and application of chapter generally.
71-7-15. Confidentiality of information related to drug and alcohol testing; discharge or discipline of employee for refusal to consent to authorized release of information.
71-7-17. Repealed.
71-7-19. Disclosure and contents of laboratory test result reports.
71-7-21. Promulgation of rules by State Board of Health.
71-7-23. Civil actions for damages and injunctive relief for violations of chapter authorized; award of attorney fees.
71-7-25. Limitation period for civil actions for violations of chapter; relief available; effect of compliance with chapter by employer; presumption as to validity of test results; actions for defamation, etc.
71-7-27. Procedure for and effect of election to conduct testing policy or program; procedure for rescission of election; effect of failure to make election or rescission of election.
71-7-29. Application of chapter to employers subject to federal testing laws.
71-7-31. Private employer establishing testing program not deemed agent or instrument of the state.
71-7-33. Requirement of abstention from use of tobacco products during non-working hours as condition of employment prohibited.

Editor's Note — Laws of 1991, ch. 610, § 18, provided for the repeal of this chapter effective July 1, 1993. Subsequently Laws of 1994, ch. 323, § 18, amended Laws of 1991, ch. 610, § 18, so as to delete the provision for the repeal of this chapter.

§ 71-7-1. Definitions.

As used in this chapter, the following terms shall have the meaning ascribed to them herein unless the context requires otherwise:

(a) "Confirmation test" means a drug and alcohol test on a specimen to substantiate the results of a prior drug and alcohol test on the specimen. The confirmation test must use an alternate method of equal or greater sensitivity than that used in the previous drug and alcohol test.

(b) "Drug" means an illegal drug, or a prescription or nonprescription medication.

(c) "Alcohol" means ethyl alcohol.

(d) "Drug and alcohol test" means a chemical test administered for the purpose of determining the presence or absence of a drug or metabolites in a person's body fluids.

(e) "Employee" means any person who supplies a service for remuneration or pursuant to any contract for hire to a private or public employer in this state.

(f) "Employee assistance program" means a program provided by an employer offering assessment, short-term counseling and referral services to employees, including drug, alcohol and mental health programs.

(g) "Employer" means any individual, organization or government body, subdivision or agency thereof, including partnership, association, trustee, estate, corporation, joint-stock company, insurance company or legal representative, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, and any common carrier by mail, motor, water, air or express company doing business in or operating within this state, which has one or more employees within this state, or which has offered or may offer employment to one or more individuals in this state.

(h) "Illegal drug" means any substance, other than alcohol, having psychological and/or physiological effects on a human being and that is not a prescription or nonprescription medication, including controlled dangerous substances and controlled substance analogs or volatile substances which produce the psychological and/or physiological effects of a controlled dangerous substance through deliberate introduction into the body.

(i) "Initial test" means an initial drug test to determine the presence or absence of drugs or their metabolites in specimens.

(j) "Laboratory" means any laboratory that is currently certified or accredited by the federal Clinical Laboratory Improvement Act, as amended, by the federal Substance Abuse and Mental Health Services Administration, by the College of American Pathologists, or that has been deemed by the State Board of Health to have been certified or accredited by an appropriate federal agency, organization or another state.

(k) "Neutral selection basis" means a mechanism for selecting employees for drug tests that: (i) results in an equal probability that any employee from a group of employees subject to the selection mechanism will be selected, and (ii) does not give an employer discretion to waive the selection of any employee selected under the mechanism.

(*l*) "Prescription or nonprescription medication" means a drug prescribed for use by a duly licensed physician, dentist or other medical practitioner licensed to issue prescriptions or a drug that is authorized pursuant to federal or state law for general distribution and use without a prescription in the treatment of human diseases, ailments or injuries.

(m) "Reasonable suspicion drug and alcohol testing" means drug and alcohol testing based on a belief that an employee is using or has used drugs in violation of the employer's policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience, and may be based upon, among other things:

(i) Observable phenomena, such as direct observation of drug use and/or the physical symptoms or manifestations of being under the influence of a drug;

(ii) Abnormal conduct or erratic behavior while at work, absenteeism, tardiness or deterioration in work performance;

(iii) A report of drug use provided by reliable and credible sources and which has been independently corroborated;

(iv) Evidence that an individual has tampered with a drug and alcohol test during his employment with the current employer;

(v) Information that an employee has caused or contributed to an accident while at work;

(vi) Evidence that an employee is involved in the use, possession, sale, solicitation or transfer of drugs while working or while on the employer's premises or operating the employer's vehicle, machinery or equipment.

(n) "Specimen" means a tissue or product of the human body chemically capable of revealing the presence of drugs in the human body.

SOURCES: Laws, 1991, ch. 610, § 1; reenacted and codified, Laws, 1994, ch. 323, § 1; Laws, 2002, ch. 432, § 1, eff from and after July 1, 2002.

Federal Aspects — The Clinical Laboratory Improvement Act is codified in 42 USCS § 263a.

ATTORNEY GENERAL OPINIONS

A municipality may not require an employee involved in an accident to undergo post accident drug and alcohol testing if there is no reasonable suspicion of drug or alcohol use, although such a test may be required if an employee is involved in an accident and there is a reasonable suspicion of drug or alcohol use. Mitchell, July 10, 1998, A.G. Op. #98-0266.

This chapter does not authorize municipalities to require an employee involved in an accident to undergo post accident drug and alcohol testing if there is no reasonable suspicion of drug or alcohol use. Langford, April 23, 1999, A.G. Op. #99-0173.

RESEARCH REFERENCES

ALR. Liability for discharge of at-will employee for refusal to submit to drug testing. 79 A.L.R.4th 105.

Validity, under Federal Constitution, of regulations, rules, or statutes requiring random or mass drug testing of public employees or persons whose employment is regulated by state, local, or federal government. 86 A.L.R. Fed. 420.

Am Jur. 16B Am. Jur. 2d, Constitutional Law § 900, 901.

62A Am. Jur. 2d, Privacy §§ 55-57.

20 Am. Jur. Pl & Pr Forms (Rev), Privacy, Form 1 et seq.

32 Am. Jur. Trials 120, Invasion of Privacy.

CJS. 28 C.J.S., Drugs and Narcotics § 213.

Practice References. Janice Goodman, Employee Rights Litigation: Pleading and Practice (Matthew Bender).

Lex K. Larson, Employment Screening (Matthew Bender).

Shawe and Rosenthal, Employment Law Deskbook (Matthew Bender).

§ 71-7-3. Election of employer to conduct drug and alcohol testing voluntary; furnishing by employers of written policy statements on drug and alcohol use prior to implementation of testing; dissemination; standard language; notification of job applicants; signing of statements regarding testing policies by applicants or employees; testing of government employees, applicants, and elected officials.

(1) For the purposes of this chapter, the election of a public or private employer to conduct drug and alcohol testing is voluntary. If an employer elects voluntarily to follow this chapter, the employer must follow all the terms of this chapter without exception.

(2) Any employee who may be required by an employer to submit to a drug and alcohol test shall be provided, at least thirty (30) days prior to the implementation of a drug and alcohol testing program, a written policy statement from the employer which contains:

(a) A general statement of the employer's policy on employee drug use which shall include identifying both the grounds on which an employee may be required to submit to a drug and alcohol test and the actions the employer may take against an employee on the basis of a positive confirmed drug and alcohol test result, or other violation of the employer's drug use policy;

(b) A statement advising the employee of the existence of this chapter;

(c) A general statement concerning confidentiality;

(d) Procedures for how employees can confidentially report the use of prescription or nonprescription medications prior to being tested;

(e) Circumstances under which drug and alcohol testing may occur, and a description of which positions will be subject to testing on a reasonable suspicion, neutral selection or other basis;

(f) The consequences of refusing to submit to a drug and alcohol test;

(g) Information on opportunities for assessment and rehabilitation if an employee has a positive confirmed test result and the employer determines that discipline or discharge are not necessary or appropriate;

(h) A statement that an employee who receives a positive confirmed drug and alcohol test result may contest the accuracy of that result or explain it;

(i) A list of all drugs for which the employer might test. Each drug shall be described by its brand name, common name, or its chemical name;

(j) A statement regarding any applicable collective bargaining agreement or contract.

(3) An employer shall post the notice in an appropriate and conspicuous location on the employer's premises and copies of the policy shall be made available for inspection during regular business hours by employees in the employer's personnel office or other suitable locations.

(4) The State Board of Health shall develop standard language for those sections of drug and alcohol testing notices described in paragraphs (b), (c) and (d) of subsection (2) of this section.

(5) An employer who conducts job applicant drug and alcohol testing shall notify the applicant, in writing, upon application and prior to the collection of the specimen for the drug and alcohol test, that the applicant may be tested for the presence of drugs or their metabolites.

(6) An employee or job applicant required to submit to a drug and alcohol test may be requested by an employer to sign a statement indicating that he has read and understands the employer's drug and alcohol testing policy and/or notice. An employee's or job applicant's refusal to sign such a statement shall not invalidate the results of any drug and alcohol test, or bar the employer from administering the drug and alcohol test or from taking action consistent with the terms of an applicable collective bargaining agreement or the employer's drug and alcohol testing policy, or from refusing to hire the job applicant.

(7) If the employer is a government employer, the decision of whether to require employees and/or applicants for employment to submit to drug and alcohol tests in accordance with the provisions of this chapter shall be made by the executive head or governing body of the department, agency, institution or political subdivision authorized to employ. However, in the case of any elected public official of the State of Mississippi or of any department, agency, institution or political subdivision thereof, the decision of whether any person who such official is authorized to employ, or any person who any governing board, commission or body upon which or as a member of which such public official has been elected by the people to serve is authorized to employ, shall be required to submit to a drug and alcohol test in accordance with the provisions of this chapter shall be made:

(a) By the governing board, commission or body upon which or as a member of which such public official has been elected to serve; or

(b) If the elected public official has not been elected to serve upon or as a member of a governing board, commission or body, by the elected official himself.

SOURCES: Laws, 1991, ch. 610, § 2; reenacted and codified, Laws, 1994, ch. 323, § 2; Laws, 2002, ch. 432, § 2; Laws, 2004, ch. 454, § 1, eff from and after July 1, 2004.

Cross References — Workers' compensation insurers required to establish safety programs for employees of insureds, including policies for drug and alcohol testing, see § 71-3-121.

Promulgation of rules, see § 71-7-21.

Election by employer to conduct testing policy or program, see § 71-7-27.

Procedure for election to conduct testing policy or program, see § 71-7-27.

Application of chapter to employers subject to federal laws or regulations governing drug and alcohol testing, see § 71-7-29.

ATTORNEY GENERAL OPINIONS

Section 71-7-3 requires that the employer provide the employee a written policy statement at least thirty days prior to the implementation of the drug testing program. Myers, October 11, 1996, A.G. Op. #96-0655.

RESEARCH REFERENCES

ALR. Liability for discharge of at-will employee for refusal to submit to drug testing. 79 A.L.R.4th 105.

Negligent discharge of employee. 53 A.L.R.5th 219.

Practice References. Janice Goodman, Employee Rights Litigation: Pleading and Practice (Matthew Bender).

Lex K. Larson, Employment Screening (Matthew Bender).

Shawe and Rosenthal, Employment Law Deskbook (Matthew Bender).

§ 71-7-5. Conduct of testing generally; authorized types of tests.

(1) Except as otherwise provided in Section 71-7-27, all drug and alcohol testing conducted by employers shall be in conformity with the standards established in this section, other applicable provisions of this chapter, and all applicable regulations promulgated pursuant to this chapter.

(2) An employer is authorized to conduct the following types of drug and alcohol tests:

(a) Employers may require job applicants to submit to a drug and alcohol test as a condition of the employment application and may use a refusal to submit to a test or positive confirmed test result as a basis for refusal to hire.

(b) An employer may require all employees to submit to reasonable suspicion drug and alcohol testing. There is created a rebuttable presumption that the employer had reasonable suspicion to test for drugs if the specimen provided by the employee tested positive for drugs in a confirmatory drug test.

(c) An employer may require all employees to submit to neutral selection drug and alcohol testing pursuant to Section 71-7-9.

SOURCES: Laws, 1991, ch. 610, § 3; reenacted and codified, Laws, 1994, ch. 323, § 3, eff from and after passage (approved March 14, 1994).

Cross References — Neutral selection testing, see § 71-7-7.

Confirmation testing, see § 71-7-11.

ATTORNEY GENERAL OPINIONS

A municipality may not require an employee involved in an accident to undergo post accident drug and alcohol testing if there is no reasonable suspicion of drug or alcohol use, although such a test may be required if an employee is involved in an accident and there is a reasonable suspicion of drug or alcohol use. Mitchell, July 10, 1998, A.G. Op. #98-0266.

An employer may require all applicants to submit to drug and alcohol testing. Rector, Oct. 10, 2003, A.G. Op. 03-0301.

RESEARCH REFERENCES

ALR. Validity and operation of pre-employment drug testing — State cases. 96 A.L.R.5th 485.

Am Jur. 63C Am. Jur. 2d, Public Officers and Employees §§ 198, 267 et seq.

Practice References. Janice Goodman, Employee Rights Litigation: Pleading and Practice (Matthew Bender).

Lex K. Larson, Employment Screening (Matthew Bender).

Shawe and Rosenthal, Employment Law Deskbook (Matthew Bender).

§ 71-7-7. Neutral selection drug and alcohol testing; routine testing; testing of employees participating in rehabilitation.

(1) Subject to the provisions of this chapter and any applicable collective bargaining agreement or contract, any nongovernment employer may require as a condition of employment or as a condition of continued employment that employees submit to neutral selection drug and alcohol testing.

(2) Subject to the provisions of this chapter, any government employer may require as a condition of employment or as a condition of continued employment that employees submit to neutral selection drug and alcohol testing; provided, however, that the employees tested and the criteria for such testing shall be determined by the government employer, based upon the extent to which the government employer:

(a) Is engaged in law enforcement;

(b) Has national or state security responsibilities;

(c) Has drug interdiction responsibilities; or

(d) Has positions which:

(i) Authorize employees to carry firearms;

(ii) Give employees access to sensitive information;

(iii) Authorize employees to engage in law enforcement;

(iv) Require employees, as a condition of employment, to obtain a security clearance; or

(v) Require employees to engage in activities affecting public health or safety.

(3) An employer may require an employee to submit to a drug and alcohol test if the test is conducted as part of a routinely scheduled employee fitness for duty medical examination that is part of the employer's established policy and/or which is scheduled routinely for all members of an employment classification or group.

(4) An employer may require an employee to submit to neutral selection or routine drug and alcohol tests if the employee in the course of his employment enters a drug abuse rehabilitation program, and as a follow-up to such rehabilitation, or if previous drug and alcohol testing of the employee within a twelve-month period resulted in a positive confirmed test result, or the drug and alcohol test is conducted in accordance with the terms of an applicable collective bargaining agreement or contract that permits the employer to administer drug and alcohol tests on a neutral selection or routine basis.

(5) If an employee is participating in drug abuse rehabilitation, drug and alcohol testing may be conducted by the rehabilitation provider as deemed appropriate by the provider.

SOURCES: Laws, 1991, ch. 610, § 4; reenacted and codified, Laws, 1994, ch. 323, § 4, eff from and after passage (approved March 14, 1994).

Cross References — Authorized tests generally, see § 71-7-5.
Confirmation testing, see § 71-7-11.

ATTORNEY GENERAL OPINIONS

An employer may adopt a policy to require all employees that are subject to neutral selection testing pursuant to this section to submit simultaneously to drug and alcohol screening at regular intervals without submitting the employee to a fitness for duty medical exam. Rector, Oct. 10, 2003, A.G. Op. 03-0301.

RESEARCH REFERENCES

Practice References. Janice Goodman, Employee Rights Litigation: Pleading and Practice (Matthew Bender).

Lex K. Larson, Employment Screening (Matthew Bender).

Shawe and Rosenthal, Employment Law Deskbook (Matthew Bender).

§ 71-7-9. Collection, storage and transportation of specimens; time of testing; rights of employees upon receipt of positive results; discharge, discipline, etc., of employees generally; payment of costs of testing.

(1) The collection of specimens shall be performed under reasonable and sanitary conditions. Individual dignity shall be preserved to the extent practicable.

(2) Specimens shall be collected in a manner reasonably calculated to prevent substitution of specimens and interference with the collection or testing of specimens.

(3) Specimen collection shall be documented, and the documentation procedures shall include:

(a) Labeling of specimen containers so as to reasonably preclude the likelihood of erroneous identification of test results; and

(b) An opportunity for the employee or applicant to provide any information that he considers relevant to the test, including identification of currently or recently used prescription or nonprescription drugs, or other relevant medical information. The provision of this information shall not preclude the administration of the drug and alcohol test, but shall be taken into account in interpreting any positive confirmed results.

(4) Specimen collection, storage and transportation to the testing site will be performed in a manner which will reasonably preclude specimen contamination or adulteration, and specimen testing for drugs shall conform to scientifically accepted analytical methods and procedures.

(5) Each confirmation test conducted under this chapter, not including the taking or collecting of a specimen to be tested, shall be conducted by a laboratory.

(6) A specimen for a drug and alcohol test may be taken or collected by any of the following persons:

(a) A physician, a registered nurse or a licensed practical nurse;

(b) A qualified person employed by a laboratory; or

(c) Any person deemed qualified by the State Board of Health.

(7) A person who collects or takes a specimen for a drug and alcohol test conducted pursuant to this chapter shall collect an amount sufficient for at least two (2) drug and alcohol tests as defined by federal statutes and regulations.

(8) Any drug and alcohol testing conducted or requested by an employer shall occur during or immediately after the regular work period of current employees, and shall be deemed to be performed during work time for purposes of determining compensation and benefits for current employees.

(9) Every specimen that produces a positive confirmed result shall be preserved in a frozen state by the laboratory that conducts the confirmation test for a period of ninety (90) days from the time the results of the positive confirmed test are mailed or otherwise delivered to the employer. During this period, the employee who has provided the specimen shall be permitted by the employer to have a portion of the specimen retested, at the employee's expense, at a laboratory chosen by the employee. The laboratory that has performed the test for the employer shall be responsible for the transfer of the portion of the specimen to be retested, and for the integrity of the chain of custody during such transfer.

(10) Within five (5) working days after receipt of a positive confirmed test result report from the laboratory that conducted the test, an employer shall, in writing, inform an employee of such positive test result and inform the employee in writing of the consequences of such a report and the options available to him.

(11) An employee may request and receive from the employer a copy of the test result report.

(12) Within ten (10) working days after receiving notice of a positive confirmed test result, the employee may submit information to an employer explaining the test results, and why the results do not constitute a violation of

the employer's policy. If an employee's explanation of the positive test results is not satisfactory to the employer, a written explanation submitted by the employer as to why the employee's explanation is unsatisfactory, along with the report of positive results, shall be made a part of the employee's medical and personnel records.

(13) Except as otherwise provided in Section 71-7-13(10), an employer may not discharge, discipline, refuse to hire, discriminate against, or request or require rehabilitation of an employee on the basis of a positive test result that has not been verified by a confirmatory test.

(14) An employer may not discharge, discipline, discriminate against or request or require rehabilitation of an employee on the basis of medical history information revealed to the employer pursuant to this chapter unless the employee had an affirmative obligation to provide such information before, upon or after hire.

(15) An employer who performs on-site drug and alcohol tests or specimen collection shall establish chain-of-custody procedures to ensure proper record keeping, handling, labeling and identification of all specimens to be tested.

(16) The employer shall pay the costs of all drug and alcohol tests to which he requires, or requests, an employee or job applicant to submit. The employee or job applicant shall pay the costs of any additional drug and alcohol tests requested by the employee or job applicant.

SOURCES: Laws, 1991, ch. 610, § 5; reenacted and codified, Laws, 1994, ch. 323, § 5; Laws, 2002, ch. 432, § 3, eff from and after July 1, 2002.

Cross References — Conduct of testing and authorized types of tests generally, see § 71-7-5.

Conduct of confirmation tests, see § 71-7-11.

RESEARCH REFERENCES

ALR. Liability for discharge of at-will employee for refusal to submit to drug testing. 79 A.L.R.4th 105.

Negligent discharge of employee. 53 A.L.R.5th 219.

§ 71-7-11. Conduct of confirmation tests.

Only laboratories shall conduct confirmation drug and alcohol tests. All confirmation tests shall use an alternate method of equal or greater sensitivity than that used on the initial drug and alcohol test. If an initial drug and alcohol test is negative, there shall be no confirmation drug and alcohol test.

SOURCES: Laws, 1991, ch. 610, § 6; reenacted and codified, Laws, 1994, ch. 323, § 6; Laws, 2002, ch. 432, § 4, eff from and after July 1, 2002.

Cross References — Confirmation testing generally, see § 71-7-11.

Confirmation testing generally, see § 71-7-11.

§ 71-7-13. Designation of employee or applicant as handicapped due to test result; discharge, discipline, etc., of employee on basis of test result or refusal to submit; construction and application of chapter generally.

(1) An employee or job applicant whose drug and alcohol test result is confirmed as positive in accordance with the provisions of this chapter shall not, by virtue of the result alone, be defined as a person with a "handicap."

(2) An employer who discharges or disciplines an employee on the basis of a positive confirmed drug and alcohol test in accordance with this chapter shall be considered to have discharged or disciplined the employee for cause.

(3) An employee discharged on the basis of a confirmed positive drug and alcohol test in accordance with this chapter shall be considered to have been discharged for willful misconduct.

(4) A physician-patient relationship is not created between an employee or job applicant, and an employer or any person performing or evaluating the drug and alcohol test, solely by the establishment or implementation of a drug and alcohol testing program.

(5) This chapter does not prevent an employer from establishing reasonable work rules related to employee possession, use, sale or solicitation of drugs, including convictions for drug-related offenses, and taking action based upon a violation of any of those rules.

(6) This chapter shall not be retroactive and shall not abrogate any right an employer may have to conduct drug and alcohol tests prior to July 1, 1991. A drug and alcohol test conducted by an employer before July 1, 1991, shall not be subject to this chapter.

(7) If an employee refuses to submit to drug and alcohol testing administered in accordance with this chapter, the employer shall not be barred from discharging, or disciplining, or referring the employee to a drug abuse assessment, treatment and rehabilitation program at a site certified by the Department of Mental Health.

(8) An employer, in addition to any appropriate personnel actions, may refer any employee found to have violated the employer's policy on drug use to an employee assistance program for assessment, counseling and referral for treatment or rehabilitation as appropriate. Such treatment or rehabilitation shall be at a site certified by the Department of Mental Health.

(9) This chapter does not prohibit an employer from conducting medical screening or other tests required by any statute, rule or regulation for the purpose of monitoring exposure of employees to toxic or other unhealthy substances in the workplace or in the performance of job responsibilities. Such screenings or tests shall be limited to the specific substances expressly identified in the applicable statute, rule or regulation, unless prior written consent of the employee is obtained for other tests.

(10) An employer may temporarily suspend or transfer an employee to another position after obtaining the results of a positive on-site initial test. An employer may discharge an employee after obtaining the results of a positive confirmed test.

(11) Nothing in this chapter shall affect any right of an employer to terminate the employment of any person for reasons not related to a drug and alcohol testing program implemented pursuant to the provisions of this chapter.

SOURCES: Laws, 1991, ch. 610, § 7; reenacted and codified, Laws, 1994, ch. 323, § 7, eff from and after passage (approved March 14, 1994).

Cross References — Discharge or discipline of employee for refusal to consent to authorized release of information relating to testing, see § 71-7-15.

JUDICIAL DECISIONS

1. Sufficiency of evidence.

Miss. Code Ann. § 71-7-13(3) provided that an employee discharged on the basis of a confirmed positive drug and alcohol test would be considered to have been discharged for willful misconduct; the evidence and testimony contained in the record clearly showed that the employee tested positive for marijuana on the random drug test, and nothing in the record supported the employee's claim that he was "set up" or that his urine was switched, such that the record contained sufficient evidence to support the conclusion that the employee's actions constituted disqualifying misconduct. Curtis v. Miss. Empl. Sec. Comm'n, 878 So. 2d 1094 (Miss. Ct. App. 2004).

RESEARCH REFERENCES

ALR. Liability for discharge of at-will employee for refusal to submit to drug testing. 79 A.L.R.4th 105.

Private employee's loss of employment because of refusal to submit to drug test as affecting right to unemployment compensation. 86 A.L.R.4th 309.

§ 71-7-15. Confidentiality of information related to drug and alcohol testing; discharge or discipline of employee for refusal to consent to authorized release of information.

(1) All information, interviews, reports, statements, memoranda and test results, written or otherwise, received by the employer through its drug and alcohol testing program are confidential communications and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in accordance with this chapter.

(2) Any information obtained by an employer pursuant to this chapter shall be the property of the employer.

(3) An employer shall not release to any person other than the employee or job applicant, or employer medical, supervisory or other personnel, as designated by the employer on a need to know basis, information related to drug and alcohol test results unless:

(a) The employee or job applicant has expressly, in writing, granted permission for the employer to release such information;

(b) It is necessary to introduce a positive confirmed test result into an arbitration proceeding pursuant to a collective bargaining agreement, an administrative hearing under applicable state or local law, or a judicial proceeding, provided that information is relevant to the hearing or proceeding, or the information must be disclosed to a federal or state agency or other unit of the state or United States government as required under law, regulation or order, or in accordance with compliance requirements of a state or federal government contract, or disclosed to a drug abuse rehabilitation program for the purpose of evaluation or treatment of an employee; or

(c) There is a risk to public health or safety that can be minimized or prevented by the release of such information; provided, however, that unless such risk is immediate, a court order permitting the release shall be obtained prior to the release of the information.

(4) The confidentiality provisions provided for in this section shall not apply to other parts of an employee's or job applicant's personnel or medical files.

(5) If an employee refuses to sign a written consent form for release of information to persons as permitted in this chapter, the employer shall not be barred from discharging or disciplining the employee.

SOURCES: Laws, 1991, ch. 610, § 8; reenacted and codified, Laws, 1994, ch. 323, § 8, eff from and after passage (approved March 14, 1994).

Cross References — Workers' compensation insurers required to establish safety programs for employees of insureds, including policies for drug and alcohol testing, see § 71-3-121.

RESEARCH REFERENCES

Am Jur. 62A Am. Jur. 2d, Privacy §§ 55-57.

20 Am. Jur. Pl & Pr Forms (Rev), Privacy, Form 1 et seq.

32 Am. Jur. Trials 120, Invasion of Privacy.

8 Am. Jur. Proof of Facts 3d 185, Proof of Violation of Privacy Rights in Employment Drug Testing.

Practice References. Employee Rights Litigation: Pleading and Practice (Matthew Bender).

Lex K. Larson, Employment Screening (Matthew Bender).

Shawe and Rosenthal, Employment Law Deskbook (Matthew Bender).

§ 71-7-17. Repealed.

Repealed by Laws, 2002, ch. 432, § 5, eff from and after July 1, 2002.

[Laws, 1991, ch. 610, § 9; reenacted and codified, Laws, 1994, ch. 323, § 9, eff from and after passage (approved March 14, 1994).]

Editor's Note — Former § 71-7-17 provided certain standards for laboratories conducting drug and alcohol confirmation tests.

§ 71-7-19. Disclosure and contents of laboratory test result reports.

(1) A laboratory shall disclose to the employer a written test result report within five (5) working days after the test.

(2) All laboratory reports of a test result shall, at a minimum, state:

(a) The name and address of the laboratory that performed the test and the positive identification of the person tested;

(b) Any positive confirmed drug and alcohol test results on a specimen which tested positive on an initial test, or a negative drug and alcohol test result on a specimen; provided, however, that reports should not make reference to initial or confirmatory tests when reporting positive or negative results;

(c) A list of the drugs tested for;

(d) The type of tests conducted for both initial and confirmation tests and the cut-off levels of the tests; and

(e) The report shall not disclose the presence or absence of any physical or mental condition or of any drug other than the specific drug and its metabolites that an employer requests to be identified.

SOURCES: Laws, 1991, ch. 610, § 10; reenacted and codified, Laws, 1994, ch. 323, § 10, eff from and after passage (approved March 14, 1994).

Cross References — Workers' compensation insurers required to establish safety programs for employees of insureds, including policies for drug and alcohol testing, see § 71-3-121.

Rights of employees upon receipt by employer of positive confirmed test results, see § 71-7-9.

§ 71-7-21. Promulgation of rules by State Board of Health.

The State Board of Health shall adopt rules concerning:

(a) Standards for drug and alcohol testing laboratory certification, suspension and revocation of certification;

(b) Body specimens that are appropriate for drug and alcohol testing;

(c) Methods of analysis and procedures to ensure reliable drug and alcohol testing results, including standards for initial tests and confirmatory tests;

(d) Guidelines on how to establish cut-off detection levels for drugs or their metabolites for the purposes of determining a positive test result;

(e) Chain-of-custody procedures to ensure proper identification, labeling and handling of specimens being tested; and

(f) Retention and storage procedures to ensure reliable results on confirmation tests and retests.

SOURCES: Laws, 1991, ch. 610, § 11; reenacted and codified, Laws, 1994, ch. 323, § 11, eff from and after passage (approved March 14, 1994).

Cross References — Workers' compensation insurers required to establish safety programs for employees of insureds, including policies for drug and alcohol testing, see § 71-3-121.

Development of standard for drug and alcohol testing notices, see § 71-7-3.

§ 71-7-23. Civil actions for damages and injunctive relief for violations of chapter authorized; award of attorney fees.

(1) A person alleging a violation of this chapter may bring an action for injunction relief or damages, or both.

(2) For the purposes of this chapter, damages shall be limited to the recovery of compensatory damages directly resulting from injury or loss caused by each violation of this chapter.

(3) A person or collective bargaining agent may bring an action under this section only after first exhausting all applicable grievance procedures and arbitration proceeding requirements under a collective bargaining agreement; provided, however, that the person's right to bring an action under this section shall not be affected by a decision of a collective bargaining agent not to pursue a grievance.

(4) If a violation of this chapter is found and damages are awarded, reasonable attorney fees may be awarded to the person if the court or arbitrator finds that an employer has knowingly or recklessly violated this chapter.

SOURCES: Laws, 1991, ch. 610, § 12; reenacted and codified, Laws, 1994, ch. 323, § 12, eff from and after passage (approved March 14, 1994).

Cross References — Limitation period and remedies, see § 71-7-25.

§ 71-7-25. Limitation period for civil actions for violations of chapter; relief available; effect of compliance with chapter by employer; presumption as to validity of test results; actions for defamation, etc.

(1) Upon an alleged violation of the provisions of this chapter, a person must institute a civil action in a court of competent jurisdiction within one (1) year of the alleged violation or the exhaustion of any internal administrative remedies available to the person, or be barred from obtaining the relief provided for in subsection (2) of this section.

(2) Relief for violations of this chapter shall be limited to:

(a) An injunction to restrain the continued violation of this chapter;

(b) The reinstatement of the person to the same position held before the unlawful drug and alcohol testing, disciplinary action or discharge, or to an equivalent position;

(c) The reinstatement of full employee benefits and seniority rights;

(d) Compensation for lost wages, benefits and other remuneration to which the person would have been entitled but for a violation of this chapter;

(e) Payment by the employer of reasonable costs.

(3) Any employer who complies with the provisions of this chapter shall be without liability from all civil actions arising from any drug and alcohol testing programs or procedures performed in compliance with this chapter.

(4) Pursuant to any claim alleging a violation of this chapter, including a claim under this chapter in which it is alleged that an employer's action with respect to a person was based on an incorrect test result, there shall be a rebuttable presumption that the test result was valid if the employer complied with the provisions of this chapter.

(5) No cause of action for defamation of character, libel, slander or damage to reputation arises in favor of any person against an employer who has established a program of drug and alcohol testing in accordance with this chapter, unless:

(a) Information regarded as confidential is released not in accordance with an information release form signed by the person or otherwise not in accordance with this chapter;

(b) The information disclosed was based on an incorrect test result;

(c) The incorrect test result was disclosed with malice; and

(d) All other elements of an action for defamation of character, libel, slander or damage to reputation as established by statute or common law, are satisfied.

(6) No cause of action shall arise in favor of any person based upon the failure of an employer to establish a program or policy for drug and alcohol testing.

SOURCES: Laws, 1991, ch. 610, § 13; reenacted and codified, Laws, 1994, ch. 323, § 13, eff from and after passage (approved March 14, 1994).

Cross References — Award of attorney fees, see § 71-7-23.

RESEARCH REFERENCES

Am Jur. 62A Am. Jur. 2d, Privacy § 55-57.

20 Am. Jur. Pl & Pr Forms (Rev), Privacy, Form 1 et seq.

32 Am. Jur. Trials 120, Invasion of Privacy.

§ 71-7-27. Procedure for and effect of election to conduct testing policy or program; procedure for rescission of election; effect of failure to make election or rescission of election.

(1) A private employer may affirmatively elect to conduct an employee drug and alcohol testing policy or program pursuant to the provisions of this chapter. Such election shall be made by including in the written statement of the employer's policy on drug use provided for in Section 71-7-3(1), and in the job applicant notification provided for in Section 71-7-3(4), a specific statement that the employer's policy is being implemented pursuant to the provisions of this chapter. In the event a private employer makes such an election, the

private employer and its employees and job applicants shall have the rights and obligations available to a private employer and its employees and job applicants under this chapter. A private employer who has made such an election may rescind such election by posting a written and dated notice in an appropriate and conspicuous location on the employer's premises, which notice shall state that the employer's employee drug and alcohol testing policy or program will no longer be conducted pursuant to this chapter. As to employees, the rescission of such election shall become effective no earlier than ten (10) working days after the date of the posted notice. As to job applicants, an employer may rescind such election without notice to such job applicant.

(2) Any private employer who does not make such an election or who rescinds an election previously made will be deemed to not be conducting an employee drug and alcohol testing policy or program pursuant to the provisions of this chapter, and in that event the rights and obligations of the employer and its employees and job applicants will not in any way be subject to or affected by the provisions of this chapter, but will instead be governed by applicable principles of contract or common law.

SOURCES: Laws, 1991, ch. 610, § 14; reenacted and codified, Laws, 1994, ch. 323, § 14, eff from and after passage (approved March 14, 1994).

Cross References — Conduct of testing generally, see § 71-7-5.

§ 71-7-29. Application of chapter to employers subject to federal testing laws.

This chapter shall not apply to any employer who is subject to federal law or federal regulations governing the administering of drug and alcohol tests to any of its employees or applicants for employment.

SOURCES: Laws, 1991, ch. 610, § 15; reenacted and codified, Laws, 1994, ch. 323, § 15, eff from and after passage (approved March 14, 1994).

§ 71-7-31. Private employer establishing testing program not deemed agent or instrument of the state.

A private employer shall not, by virtue of establishing or implementing a program for drug and alcohol testing in accordance with this chapter or otherwise, be deemed to be an agent or instrument of the State of Mississippi or any body, department, agency, institution or political subdivision thereof.

SOURCES: Laws, 1991, ch. 610, § 16; reenacted and codified, Laws, 1994, ch. 323, § 16, eff from and after passage (approved March 14, 1994).

§ 71-7-33. Requirement of abstention from use of tobacco products during nonworking hours as condition of employment prohibited.

It shall be unlawful for any public or private employer to require as a condition of employment that any employee or applicant for employment abstain from smoking or using tobacco products during nonworking hours, provided that the individual complies with applicable laws or policies regulating smoking on the premises of the employer during working hours.

SOURCES: Laws, 1991, ch. 610, § 17; reenacted and codified, Laws, 1994, ch. 323, § 17, eff from and after passage (approved March 14, 1994).

RESEARCH REFERENCES

Practice References. Employee Rights Litigation: Pleading and Practice (Matthew Bender).

Lex K. Larson, Employment Screening (Matthew Bender).

Shawe and Rosenthal, Employment Law Deskbook (Matthew Bender).

CHAPTER 9

Medical Savings Account Act

Sec.
71-9-1. Short title.
71-9-3. Definitions.
71-9-5. Authority to establish medical savings account; limits on deductible amounts contributed to account; interest earned on account excluded from gross income.
71-9-7. Use of funds in account; distribution of funds in account upon death of account holder.
71-9-9. Withdrawals from account by account holder.

§ 71-9-1. Short title.

This chapter shall be known and may be cited as the "Medical Savings Account Act."

SOURCES: Laws, 1994, ch. 468, § 1; reenacted and amended, Laws, 1997, ch. 606, § 3, eff from and after passage (approved April 24, 1997).

Editor's Note — Laws of 1997, ch. 606, § 3, provides that § 71-9-1 is reenacted and amended. However, the statement that the section was amended appears to be an error since no changes were made.

Laws of 1997, ch. 606, § 9, provides as follows:

"SECTION 9. Section 7, Chapter 468, General Laws of 1994, is amended as follows: "Section 7. This act shall take effect and be in force from and after January 1, 1994."

§ 71-9-3. Definitions.

As used in this chapter:

(a) "Account administrator" means a state chartered bank, savings and loan association, credit union or trust company authorized to act as a fiduciary and under the supervision of the Department of Banking and Consumer Finance or the Department of Savings Associations, as appropriate; a national bank, national lending association or federal savings and loan association or credit union authorized to act as a fiduciary in this state; an insurer licensed and admitted to do business in this state; a third party administrator licensed by the Mississippi Commissioner of Insurance; or an employer, if the employer has a self-insured health plan meeting federal ERISA requirements.

(b) "Account holder" means a resident individual or an employee for whose benefit a medical savings account is established.

(c) "Dependent" means the spouse of an account holder or the child of an account holder if the child is:

(i) Legally entitled to the provision of proper or necessary subsistence, education, medical care, or other care necessary for his or her health, guidance or well-being and not otherwise emancipated, self-supporting, married or a member of the Armed Forces of the United States; or

(ii) Mentally or physically incapacitated to the extent that he or she is not self-sufficient.

(d) "Domicile" means a place where an individual has his or her true, fixed and permanent home and principal establishment, to which, whenever absent, he or she intends to return.

(e) "Eligible medical expense" means an expense paid by a taxpayer for medical care described in Section 213(d) of the Internal Revenue Code.

(f) "Health savings account" means a trust or custodian established in this state pursuant to Section 233 of the Internal Revenue Code of 1986 and rules or guidance thereunder issued by the U.S. Department of the Treasury or Internal Revenue Service.

(g) "High deductible health plan" means a health coverage policy, certificate or contract that provides for payments for covered benefits that exceed the higher deductible.

(h) "Higher deductible" means a deductible of not less than One Thousand Five Hundred Dollars ($1,500.00) but not more than Two Thousand Two Hundred Fifty Dollars ($2,250.00) for individual health coverage, and not less than Three Thousand Dollars ($3,000.00) but not more than Four Thousand Five Hundred Dollars ($4,500.00) for health coverage provided to an individual and his or her dependents, in tax year 1994. Beginning after 1998, such deductible limits thereafter shall be adjusted annually in fifty-dollar increments for increases in the cost of living, as measured by the medical costs component of the Consumer Price Index.

(i) "Medical savings account" means an account established to pay eligible medical expenses of the account holder and his or her dependents and, for purposes of state income tax deductions, includes the term "health savings account" as defined in paragraph (f) of this section.

(j) "Medical savings account program" means a program that includes all of the following:

(i) The purchase by an employer of a qualified higher deductible health plan for the benefit of an employee and his or her dependents or the purchase by a resident individual of a qualified higher deductible health plan for his or her benefit or for the benefit of his or her dependents, or both;

(ii) The payment on behalf of an employee into a medical savings account by his or her employer or payment into a medical savings account by a resident individual on his or her behalf of at least sixty-six and two-thirds percent (66-⅔%) of the premium reduction realized by the purchase of a qualified higher deductible health plan; and

(iii) An account administrator to administer the medical savings account and the reimbursement of eligible medical expenses therefrom.

(k) "Qualified higher deductible health plan" means an accident and health insurance policy, certificate or contract that:

(i) Is purchased by an employer for the benefit of an employee or by a resident individual for his or her benefit; and

(ii) Provides for payment of covered expenses that exceed the higher deductible, but shall not exceed the maximum out-of-pocket expenses of

Three Thousand Dollars ($3,000.00) for individual coverage and Five Thousand Five Hundred Dollars ($5,500.00) for family coverage.

(*l*) "Resident individual" means an individual who has a domicile in this state.

SOURCES: Laws, 1994, ch. 468, § 2; reenacted and amended, Laws, 1997, ch. 606, § 4; Laws, 2005, ch. 466, § 1, eff from and after passage (approved Mar. 29, 2005.)

Editor's Note — Laws of 1997, ch. 606, § 9, provides as follows:

"SECTION 9. Section 7, Chapter 468, General Laws of 1994, is amended as follows: "Section 7. This act shall take effect and be in force from and after January 1, 1994."

Cross References — As to authority of Department of Finance and Administration to offer medical savings accounts, see § 25-15-9.

Federal Aspects — Section 231(d) of the Internal Revenue Code is classified at 26 USCS § 213(d).

Employee Retirement Income Security Act (ERISA), see 29 USCS §§ 1001 et seq.

§ 71-9-5. Authority to establish medical savings account; limits on deductible amounts contributed to account; interest earned on account excluded from gross income.

(1) Each employer shall be permitted to offer voluntarily the following programs:

(a) Continued coverage under the employer's existing health coverage policy, certificate or contract; or

(b) Participation in a medical savings account program.

(2) An employer that previously did not provide an accident and health insurance policy, certificate or contract for his or her employees may establish a medical savings account program. In this case, the premium reduction referred to in Section 71-9-3(j)(ii) shall be based on the cost of similar coverage with a Five Hundred Dollar ($500.00) deductible.

(3) A resident individual may establish a medical savings account for the benefit of himself or herself and his or her dependents. Contributions to a medical savings account established by a resident individual for a tax year shall not exceed the allowable deductible for a qualified higher deductible health plan.

(4) Except as otherwise provided by law, the principal contributed and the interest earned on a medical savings account shall be excluded from the taxable gross income of the account holder under Section 27-7-15.

SOURCES: Laws, 1994, ch. 468, § 3; reenacted without change, Laws, 1997, ch. 606, § 5, eff from and after passage (approved April 24, 1997).

Editor's Note — Laws of 1997, ch. 606, § 9, provides as follows:

"SECTION 9. Section 7, Chapter 468, General Laws of 1994, is amended as follows: "Section 7. This act shall take effect and be in force from and after January 1, 1994."

§ 71-9-7. Use of funds in account; distribution of funds in account upon death of account holder.

(1) Except as otherwise provided in Section 71-9-9 of this chapter, an account administrator shall use the funds held in a medical savings account solely for the purpose of paying eligible medical expenses of the account holder, or his or her dependent, or to pay for an accident and health insurance policy, certificate or contract if the account holder would not otherwise have accident and health insurance coverage.

(2) The account holder may submit documentation for eligible medical expenses paid by the account holder during a tax year to the account administrator, and the account administrator shall reimburse the account holder for the eligible medical expenses out of the medical savings account.

(3) Upon the death of the account holder, the account administrator shall distribute the principal and accumulated interest of the medical savings account to the estate of the account holder, unless the account holder has designated a beneficiary in writing to the account administrator, in which case the accountant administrator shall make such distribution to the designated beneficiary.

SOURCES: Laws, 1994, ch. 468, § 4; reenacted without change, Laws, 1997, ch. 606, § 6, eff from and after passage (approved April 24, 1997).

Editor's Note — Laws of 1997, ch. 606, § 9, provides as follows:
"SECTION 9. Section 7, Chapter 468, General Laws of 1994, is amended as follows: "Section 7. This act shall take effect and be in force from and after January 1, 1994."

§ 71-9-9. Withdrawals from account by account holder.

Unencumbered funds that have accumulated in a medical savings account that are in excess of the higher deductible may be withdrawn by the account holder for purposes other than paying eligible medical expense or procuring health coverage. Money withdrawn pursuant to this section shall be considered gross income as provided in Section 27-7-17, Mississippi Code of 1972.

SOURCES: Laws, 1994, ch. 468, § 5; reenacted without change, Laws, 1997, ch. 606, § 7, eff from and after passage (approved April 24, 1997).

Editor's Note — Laws of 1997, ch. 606, § 9, provides as follows:
"SECTION 9. Section 7, Chapter 468, General Laws of 1994, is amended as follows: "Section 7. This act shall take effect and be in force from and after January 1, 1994."

CHAPTER 11

Employment Protection Act

Sec.
71-11-1. Legislative findings.
71-11-3. Definitions; verification of work eligibility status of new hires; employer liability; exemptions; penalties for violation.

§ 71-11-1. Legislative findings.

The Legislature finds that when illegal immigrants have been sheltered and harbored in this state and encouraged to reside in this state through the benefit of work without verifying immigration status, these practices impede and obstruct the enforcement of federal immigration law, undermine the security of our borders, and impermissibly restrict the privileges and immunities of the citizens of Mississippi. The Legislature further finds that illegal immigration is encouraged when public agencies within this state provide public benefits without verifying immigration status. The Legislature further finds that the Tenth Amendment to the United States Constitution reserves to the states those powers not delegated to the United States by the Constitution. Therefore, the Legislature declares that it is a compelling public interest of this state to discourage illegal immigration by requiring all agencies within this state to fully cooperate with federal immigration authorities in the enforcement of federal immigration laws. The Legislature also finds that other measures are necessary to ensure the integrity of various governmental programs and services.

SOURCES: Laws, 2008, ch. 312, § 1, see Editor's Note for effective date.

Editor's Note — Laws of 2008, ch. 312, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after July 1, 2008, for all state agencies, departments, and political subdivisions, all employers who have contracts with the State of Mississippi, or with its departments, agencies, political subdivisions, all third party employers, and any person or company using a third-party employer.

"This act shall take effect and be in force from and after January 1, 2009, for all other employers who do business in Mississippi."

§ 71-11-3. Definitions; verification of work eligibility status of new hires; employer liability; exemptions; penalties for violation.

(1) This chapter shall be known as the "Mississippi Employment Protection Act."

(2) The provisions of this section shall be enforced without regard to race, gender, religion, ethnicity or national origin.

(3) For the purpose of this section only, the following words shall have the meanings ascribed herein unless the content clearly states otherwise:

(a) "Employer" is any person or business that is required by federal or state law to issue a United States Internal Revenue Service Form W-2 or Form 1099 to report income paid to employed or contracted personnel in Mississippi.

(b) "Employee" is any person or entity that is hired to perform work within the State of Mississippi and to whom a United States Internal Revenue Service Form W-2 or Form 1099 must be issued.

(c) "Third-party employer" is any person or company that provides workers for another person or company. This includes, but is not limited to, leasing companies and contract employers.

(d) "Status verification system" means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, Public Law 104-208, Division C, Section 403(a); 8 USC, Section 1324a, and operated by the United States Department of Homeland Security, known as the E-Verify Program.

(e) "Unauthorized alien" means an alien as defined in Section 1324a(h)(3) of Title 8 of the United States Code.

(f) "Public employer" means every department, agency or instrumentality of the state or a political subdivision of the state.

(g) "Subcontractor" means a subcontractor, contract employee, staffing agency or any contractor regardless of its tier.

(4)(a) Employers in the State of Mississippi shall only hire employees who are legal citizens of the United States of America or are legal aliens. For purposes of this section, a legal alien is an individual who was lawfully present in the United States at the time of employment and for the duration of employment, or was permanently residing in the United States under color of law at the time of employment and for the duration of employment.

(b)(i) Every employer shall register with and utilize the status verification system to verify the federal employment authorization status of all newly hired employees.

(ii) No contractor or subcontractor shall hire any employee unless the contractor or subcontractor registers and participates in the status verification system to verify the work eligibility status of all newly hired employees.

(iii) No contractor or subcontractor who enters into a contract with a public employer shall enter into such a contract or subcontract unless the contractor or subcontractor registers and participates in the status verification system to verify information of all newly hired employees.

(c) The provision of this section shall not apply to any contracts entered into on or before July 1, 2008.

(d) It shall be a discriminatory practice for an employer to discharge an employee working in Mississippi who is a United States citizen or permanent resident alien while retaining an employee who the employing entity knows, or reasonably should have known, is an unauthorized alien hired after July 1, 2008, and who is working in Mississippi in a job category that requires equal skill, effort and responsibility, and which is performed under similar working conditions, as defined by 29 USC, Section 206(d) (1), as the job category held by the discharged employee.

(e) An employing entity which, on the date of the discharge in question, was enrolled in and used the status verification system to verify the employment eligibility of its employees in Mississippi hired after July 1, 2008, shall be exempt from liability, investigation or suit arising from any action under this section.

(f) No cause of action for a violation of this section shall lie under any other Mississippi law but shall arise solely from the provisions of this section.

(5) Any employer that complies with the requirements of this section shall be held harmless by the Mississippi Department of Employment Security, provided the employer is not directly involved in the creation of any false documents, and provided that the employer did not knowingly and willfully accept false documents from the employee.

(6)(a) All third-party employers that conduct business in Mississippi shall register to do business in Mississippi with the Mississippi Department of Employment Security before placing employees into the workforce in Mississippi.

(b) Third-party employers shall provide proof of registration and any participation in the status verification system to any Mississippi employer with whom they do business.

(7)(a) State of Mississippi agencies and political subdivisions, public contractors and public subcontractors and private employers with two hundred fifty (250) or more employees shall meet verification requirements not later than July 1, 2008.

(b) Employers with at least one hundred (100) but less than two hundred fifty (250) employees shall meet verification requirements not later than July 1, 2009.

(c) Employers with at least thirty (30) but less than one hundred (100) employees shall meet verification requirements not later than July 1, 2010.

(d) All employers shall meet verification requirements not later than July 1, 2011.

(e)(i) Any employer violating the provisions of this section shall be subject to the cancellation of any state or public contract, resulting in ineligibility for any state or public contract for up to three (3) years, the loss of any license, permit, certificate or other document granted to the employer by any agency, department or government entity in the State of Mississippi for the right to do business in Mississippi for up to one (1) year, or both.

(ii) The contractor or employer shall be liable for any additional costs incurred by the agencies and institutions of the State of Mississippi, or any of its political subdivisions, because of the cancellation of the contract or the loss of any license or permit to do business in the state.

(iii) Any person or entity penalized under this section shall have the right to appeal to the appropriate entity bringing charges or to the circuit court of competent jurisdiction.

(f) The Department of Employment Security, State Tax Commission, Secretary of State, Department of Human Services and the Attorney General shall have the authority to seek penalties under this section and to bring charges for noncompliance against any employer or employee.

(8)(a) There shall be no liability under this section in the following circumstances:

(i) An employer who hires an employee through a state or federal work program that requires verification of the employee's social security number and provides for verification of the employee's lawful presence in the United States in an employment-authorized immigration status;

(ii) Any candidate for employment referred by the Mississippi Department of Employment Security, if the Mississippi Department of Employment Security has verified the social security number and provides for verification of the candidate's lawful presence in the United States in an employment-authorized immigration status; or

(iii) Individual homeowners who hire workers on their private property for noncommercial purposes, unless required by federal law to do so.

(b)(i) Compliance with the sections of this statute shall not exempt the employer from regulations and requirements related to any federal laws or procedures related to employers.

(ii) This section shall not be construed as an attempt to preempt federal law.

(c)(i) It shall be a felony for any person to accept or perform employment for compensation knowing or in reckless disregard that the person is an unauthorized alien with respect to employment during the period in which the unauthorized employment occurred. Upon conviction, a violator shall be subject to imprisonment in the custody of the Department of Corrections for not less than one (1) year nor more than five (5) years, a fine of not less than One Thousand Dollars ($1,000.00) nor more than Ten Thousand Dollars ($10,000.00), or both.

(ii) For purposes of determining bail for persons who are charged under this section, it shall be a rebuttable presumption that a defendant who has entered and remains in the United States unlawfully is deemed at risk of flight for purposes of bail determination.

SOURCES: Laws, 2008, ch. 312, § 2, see Editor's Note for effective date.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the first sentence of (8)(c)(i). Inserted the word "in" after the word "period" so that "during the period which the unauthorized employment occurred." will read as "during the period in which the unauthorized employment occurred." The Joint Committee ratified the correction at its August 5, 2008, meeting.

Editor's Note — Laws of 2008, ch. 312, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after July 1, 2008, for all state agencies, departments, and political subdivisions, all employers who have contracts with the State of Mississippi, or with its departments, agencies, political subdivisions, all third party employers, and any person or company using a third-party employer.

"This act shall take effect and be in force from and after January 1, 2009, for all other employers who do business in Mississippi."

Section 27-3-4 provides that the terms " 'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Mississippi Department of Employment Security generally, see §§ 71-5-101 et seq.

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